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PARLIAMENTARY AFFAIRS

THE JOURNAL OF THE HANSARD SOCIETY

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Editor: SYDNEY D. BAILEY

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HANSARD SOCIETY NEWS

by STEPHEN KING-HALL

Chairman of the Council and Honorary Director

THE article which appears under the above title in each issue of our Journal is much shorter than usual this quarter for two reasons. First, it is desired to devote as much space as possible to the subject of American Government. Second, members of the Society will already have received the annual report which describes our recent activities.

The greatest enemy of parliamentary government is apathy. It is the function of the Hansard Society to extirpate that enemy and in order to strengthen our forces we need more members.

I am well aware of the economic difficulties which face many British citizens at this time but I suggest that an annual subscription of £1 1s. for corporate membership from a firm is still within the capacity of most units in British industry.

In the U.S.A. and Canada an annual subscription of \$3.25 from a private individual or a corporation still belongs to the sphere of petty cash, but of course the ignorance about our work in these countries is much greater than in Britain.

We welcome the growing list of American universities who are corporate members or take the journal, and I take this opportunity of appealing to Professors of Political Science and such like gentlemen in the academic world of the U.S.A. to examine our work, to realize that it is world-wide in scope, and to give us their support.

We are now established in our new headquarters and I anticipate that in the next issue of this journal I shall be able to give you particulars of the occasion when Hansard House will have been officially opened in the presence of the Prime Minister, Mr. Speaker, the Lord Chancellor, and other distinguished guests.

EMBASSY OF THE
UNITED STATES OF AMERICA

22nd August, 1949.

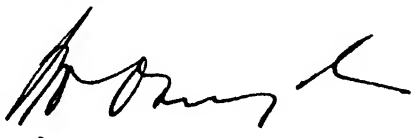
Dear Commander King-Hall:

I have noted with pleasure the distinguished writers and interesting topics listed in the table of contents for the special American issue of PARLIAMENTARY AFFAIRS.

This group of well-chosen writers can hardly fail to bring to the careful reader, be he British or American, a deeper understanding of the structure and practices of the United States.

I hope that the special American issue of PARLIAMENTARY AFFAIRS will be widely read in all the countries where it is distributed.

Sincerely,

A handwritten signature in dark ink, appearing to be 'A. H. ...', written in a cursive style.

Commander Stephen King-Hall,
Chairman and Hon. Director,
The Hansard Society,
39, Millbank,
London, S.W.1.

BRITISH EMBASSY,

WASHINGTON 8, D. C.

13th September, 1949.

Dear Commander King Hall,

I learn with great interest that you are devoting an issue of Parliamentary Affairs to the American system of government.

Few things, I think, are of greater importance in the world today than that there should be mutual understanding among the parliamentary democracies of their respective systems of government. Such understanding cannot be expected unless we are prepared to give study to the subject. If we are to have that co-operation between the democratic countries of the world which is essential to the safe continuance of their way of life, we must have sufficient knowledge of the factors inherent in their systems of government at least to enable us to understand the workings of those systems in reaction to the strains and stresses, political and economic, domestic and international, of today.

To this end, this issue of Parliamentary Affairs, with its comprehensive table of contents and its many distinguished and experienced authors, will I am sure prove a worthy guide. I wish it every success.

Yours sincerely
Oliver Franks

Commander Stephen King-Hall,
Chairman and Hon. Director,
The Hansard Society,
39, Millbank,
London, S.W.1.

THE AMERICAN PRESIDENCY

by HAROLD J. LASKI

(Professor of Political Science, University of London)

THE President of the United States now holds by far the most complex public office to which a man can be elected by public vote. In the range of his powers, in the immensity of his influence, and in his special situation as at once the head of a great state, and his own Prime Minister, his position is unique. Death and impeachment apart, nothing can remove him from office during the four years for which he has been elected. He may vary in character from virtual nonentities, like Franklin Pierce, or Millard Fillmore, or Benjamin Harrison, to figures of world stature, like Thomas Jefferson, or Abraham Lincoln, or Franklin Roosevelt. He can be, if he so desires, the complete master of his own Cabinet; and, unlike the British Prime Minister, the resignation of none of them will injure his authority, nor is it very likely to affect his prestige. Since the American Constitution is built upon the separation of powers, he can never be certain that he will be the master of Congress, even if his own party be in a majority in both of its branches; and it is at least possible that, as his occupancy of his great position draws to a close, he will find it rather his rival than his partner. If, indeed, like Woodrow Wilson in 1918, or Harry S. Truman in 1946, he finds the rival party in a Congressional majority, he may find all his policies defeated; and even if, like Hoover in his first Congress, his majority remains a considerable one, he may still leave office an unhappy and frustrated man. Roughly speaking, the President of the United States since some such time as the Civil War must exercise such authority and influence that he dominates Congress, as, on the whole, Franklin Roosevelt was able to do; or he is likely to be such a small man that,

like Calvin Coolidge, he is content to recognize that the effective source of initiative is in Congressional hands. It is not an exaggeration to say that, since 1865, William McKinley is the only President who was able to remain on consistently good terms with the legislative branch of the government.

The Presidential candidates are chosen by nominating conventions of their respective parties, usually held in the June or July preceding the November of the year of election. Voters choose Presidential Electors in each state, the Electors then forming a College which possesses, in form, the power to choose whom they will; if they cannot decide, as in 1824, the authority to choose then devolves upon the House of Representatives. In fact, today the real voting is by states, and the distribution of the population still leaves open the possibility that a successful candidate may have a majority in the Electoral College and a minority of the ballots cast by the voters themselves. It is far from easy to say what makes a nominee at the convention of either of the major parties emerge as the successful candidate; though it must be said that the nomination is very rarely the accident it is sometimes supposed to be. Washington was the obvious choice as the first candidate; long and careful preparation, including the skilfully planned decision to hold the Republican Convention at Chicago, secured the nomination for Abraham Lincoln; Grant was the candidate because he was the most successful general in the Civil War; the pathetic Warren G. Harding was the "dark horse" of a combination of Senators and Ohio politicians, mainly corrupt, who correctly anticipated, in 1920, that there would be a deadlock in the Republican Convention between the supporters of General Leonard Wood and those of Governor Frank D. Lowden, of Illinois. Roosevelt was chosen, in 1932, by the Democrats, after a long and brilliantly organized pre-election campaign which left little room for a successful counter-offensive by his opponents. Even Wendell Willkie, whose nomination as the Republican candidate against Franklin Roosevelt in 1940 seemed so surprising in the light of a previous career wholly unconnected with politics, had in fact entered the fight with well-organized

support, built on the possession of large funds, which had been carefully planned for over a year before the Convention. As George Washington, the first President, held office for two terms, and then insisted upon retiring to private life, it had become almost a convention in American politics that no President should be elected for more than two terms; and the convention remained unbroken until Franklin Roosevelt, who was to break so many traditions of his office, was elected to a third term in 1940, and to a further term in 1944.

The authority of the President rests upon a number of bases. There is his legal power as defined by the Constitution. He is Commander-in-Chief of the Armed Forces; he is the effective source of administrative power, which includes not only the right to direct the negotiation of treaties, but also, in the diplomatic sphere, to make executive agreements which, even if they do not have the status of treaties, may have at least as profound an importance; and he has the right to nominate to all the more important offices on the judicial and executive sides of the federal government, subject to the confirmation of the Senate. Much of the President's strength depends upon the skilful use of this patronage; for upon its operation in the different states there may well depend his ability to win or lose not only the votes of their representatives in Congress, but also the strength in them of his party organization, or one of its factions. By his nominations, moreover, to the Supreme Court, the President may well help to establish, even if indirectly, the criteria of constitutionality that famous institution applies; the change in the attitude of the Court after 1936 was mainly due to the fact that resignation or death enabled Mr. Roosevelt to nominate a new Chief Justice and six other of its nine members. The President, further, can propose legislation to Congress, and call it to Washington for special sessions additional to those provided for in the Constitution. He can also address it by message, or in person, when he wishes; and he has the certainty, on these occasions, that most citizens of the United States will be giving their attention to what he has

to say. He can also veto legislation passed by Congress; and, in that event, no bill becomes law unless it is passed again by Congress with a two-thirds majority in its favour in each House.

The President has not only great power; he has also great influence. Whatever voice is heard in the United States, his voice will secure attention for any subject upon which he chooses to speak; and there is, of course, no one to whose utterance so much careful scrutiny will be given abroad. While he is in office, he is the leader of his party; and there is no aspect of its policy or organization upon which his will not be the most influential word. Apart, moreover, from his official power of appointment, he can use, both at home and abroad, unofficial agents in whom he has confidence, on fact-finding and even policy-forming, missions; and once he has accredited them, their authority may well outweigh that of anyone occupying an official position whether in the executive or the legislative branch of the government. It is only necessary to remember the relation of Colonel House to President Wilson in the first world war, and of Mr. Harry Hopkins to President Roosevelt in the second, to see how important an unofficial Presidential agent may be; and Mr. Hopkins was only the most outstanding of a long list which reaches back at least to the well-known "Kitchen Cabinet" of Andrew Jackson, and beyond. Though, too, the power to declare war resides in Congress, the President may, as Commander-in-Chief of the American Armed Forces and as the sole legal depository of American diplomatic negotiation, so dispose what he commands in any critical situation as to make it virtually impossible for Congress to act differently from his wishes. It is perhaps too much to say that the war with Mexico in 1846 was the result of the stubborn determination of President James K. Polk; but it is not excessive to argue that, in the absence of his determination, the war would not have occurred. The remarkable debate in the House of Commons on 21st July, 1949, made it clear that President Roosevelt himself was the responsible author of the policy of unconditional

surrender imposed upon Nazi Germany and its satellites; and it is clear from Mr. Churchill's own narrative that he committed his allies to that policy without feeling the need of consultation with them.

The President is the complete master of his Cabinet; it exists only as an advisory body to him in whom alone the executive power legally resides. He may consult with it before taking action; he may act against its advice; he may act without consulting it at all. He may discuss matters of high importance with one or a few of its members, leaving the rest in complete darkness; Mr. Roosevelt so acted over his plan for the reform of the Supreme Court in 1937, and again in the making of the atomic bomb in the years after Pearl Harbour. He may, like Woodrow Wilson, compel the resignation of his Secretary of War by a vigorous rejection of that Minister's policy, and then, in a matter of weeks, direct the new Secretary of War to embark upon his predecessor's policy in a far more emphatic manner than was originally proposed. He may have Cabinet meetings in most weeks all the year round; but there may equally well be long periods in which he has no Cabinet meetings at all.

It is a convention of the Presidential system rarely broken—the last break was in 1925 under Calvin Coolidge—that the Senate will confirm the names of those whom the President chooses for his Cabinet. Usually he will choose at least one member with long Congressional experience—as Mr. Roosevelt chose Mr. Cordell Hull as Secretary of State—in the knowledge that inside experience of that body will help to keep smooth his relations with it. He may seek to placate or reward an unsuccessful rival for the Presidential nomination by a post in the Cabinet; that was why Mr. Wilson made Mr. W. J. Bryan his Secretary of State. He is likely to make one of the outstanding figures in the party machine Postmaster-General, with the duty to advise him on the use of all but the highest patronage; so Mr. Hoover made a Mr. Brown his Postmaster-General; and the same function, in the same office, was performed by Mr. James Farley for Mr. Roosevelt until they quarrelled in the course of the later years of the President's

second term. The President is likely, in choosing his team, to pay some attention to the geography of the United States, and to take into account the desirability of appointing a person whose choice gives satisfaction to the members of an important religious denomination. But, as with the Truman Cabinet, many of its members may be chosen on personal grounds such as friendship with the President. They may have little or no important political experience, like Mr. Snyder the present Secretary of the Treasury; and there have been few, if any, Cabinets the composition of which has remained unchanged throughout a Presidential term of office. It is even possible that a Cabinet Minister may come to national attention for the first time when he is appointed; and he may return to the obscurity of private life when his term of office is over. A Cabinet officer need not be a member of the President's own party when first appointed; Mr. Roosevelt selected Mr. Harold Ickes and Mr. Henry Wallace, though both were Progressive Republicans before their choice, and Mr. H. L. Stimson and Colonel Knox were both well-known Republicans, of honourable record but of conservative outlook, when they joined Mr. Roosevelt, amid much criticism, after the outbreak of the second world war. Mr. Chief Justice Stone, though a Republican, and a fellow student of Mr. Coolidge, had lost sight of Mr. Coolidge for many years when the President made him Attorney-General in 1928. He really knew little of his Presidential chief when he accepted the post; and he hardly knew more when the President retired, possibly against his will, in favour of Mr. Hoover in 1928-9. The degree to which the President rules his Cabinet is literally overwhelming; but, given the separation of powers, it is far from easy to see that the method could operate in any other way. Certainly it is true to say that attempts to put the Cabinet in Congress would altogether alter the place and the prestige the President holds.

He is the master of his Cabinet; but his relations with Congress are on a very different footing. It is obvious that the system makes for a certain rivalry between them, which is clear when they differ, even when the President's party has a

majority in both Houses, and may well be disastrous if that party is in a minority. It is not unfair to say that the chairmen of the major committees in each House, especially in the Senate, can go far towards wrecking Presidential policy, above all, of course, when the President's party is in a minority there. That was shown in the famous conflict of 1919 between Woodrow Wilson and Senator Henry Cabot Lodge over the Treaty of Versailles; and it was shown again in the relations between President Truman and the Republican-dominated Congress of 1946. The President, indeed, may have a majority in both Houses, and be unable to secure the acceptance of his policy; that happened to Mr. Roosevelt in 1937 over his plan for the reform of the federal judiciary; and it has been the fate of President Truman in his effort to secure the repeal of the Taft-Hartley Act and to push through legislation which would prevent the conscious invasion of Negro rights in the Southern states. Mr. Roosevelt was defeated because, unusually for him, he had failed before he secured the introduction of his measure to organize a determined public opinion on his side against which Congress was not prepared to give battle. President Truman was beaten because an American political party is always a loose amalgamation of interests which may easily split into dissident groups once an issue of special sectional importance is under consideration.

It is, indeed, impossible to predict what the relations will be between the President and his Congress. Partly it is a matter of his personality and, here, not least, of his skill in mobilizing the public against opposition to his measures. Partly, also, the time-factor is important. Most Presidents can count upon some months of what is called the "honeymoon" period; and a wise President can always do a good deal if he uses his patronage effectively, and if he knows how to handle with delicacy and tact the susceptibilities of Senators and Congressmen—particular of the former. But his power to discipline, and their openness to persuasion, are always affected by the two vital facts that there is a Congressional election every two years at which the whole of the House and one-third of the Senate must submit itself to the popular choice; and he him-

self can never forget that, shortly after he enters the White House, he must begin to lay his plans, at least in the normal case, to make sure of his nomination for a second term. No doubt if he wants a second nomination, he can have it; a party which repudiates its own leader is always in a weak position. That was what made Mr. Truman's election in 1948 so remarkable; for though the Democratic Party renominated him, a part of the South so far repudiated him as to nominate a second Democratic candidate, and so few of the remaining Democratic leaders believed he had any chance of victory that he had almost wholly to rely on his own exertions in the campaign. And all but the most outstanding Presidents have two further difficulties to confront. There are Congressional leaders with long experience of Washington before he was elected, and the knowledge that they will remain there long after he has departed; men like Henry Clay, or John C. Calhoun, or William E. Borah hardly hesitated to assume that they were entitled to treat with the President from an equal eminence. "There are always" said Calvin Coolidge, "ninety-six men at the other end of Pennsylvania Avenue who believe they can do better what needs to be done than the man in the White House is doing it." Nor must one forget the pathos of a President who feels that he is living in the shadow of his predecessor, above all when the latter is a member of his own party. A large part of William Howard Taft's Presidency was made a burden for him by his fears of what Theodore Roosevelt might say or do; it is indeed, hardly unfair to suggest that, in those four years, by far the happiest months President Taft enjoyed were those at the beginning of his tenure of the office when Theodore Roosevelt was seeking consolation for his departure from the White House in his famous big-game shooting tour of Africa, with its splendid climax of avuncular advice to Kaiser Wilhelm II, and to the British people in his solemn admonitions to them in London and in Oxford.

A word is perhaps desirable upon the effect of national crisis on the President's position. It may be fairly said in this regard that while the crisis lasts the powers of the President are almost as great as those he chooses to demand and

exercise. Internally, that can be seen from Andrew Jackson's famous struggle with the Bank of the United States, and from the overwhelming authority Franklin Roosevelt exercised in the panic of the depression which swept America when he took office on March 4th, 1933. When war is involved, the President's mastery can hardly be effectively challenged. For all the determination of Congress to share the direction of the Civil War with Lincoln through the Committee it appointed for that purpose, the effective power was always in his hands while he lived; and it is by no means excessive to describe Woodrow Wilson and Franklin Roosevelt as virtually dictators by consent in the two world wars which were waged during their respective periods of office. But just as in nature action and reaction are equal, it tends to be true that after the experience of the immense authority a crisis centralizes in the President's hands, with its close the pendulum of power tends to swing away from him to Congress. After Jefferson, the focal point of government was in Congress until the reign of Andrew Jackson, as, after Jackson, it largely reverted to Congress until the Civil War. After Lincoln, there was no really strong President until Theodore Roosevelt; and, after Woodrow Wilson's second term, which almost coincided with the entry of the United States into the first world war, there was no resolute President until the entry of Franklin Roosevelt into the White House. It should, indeed, be added that crisis of itself does not necessarily make a strong President; for there are few spectacles in American history more tragic than the weak fumbling of Buchanan as he watched helplessly the organization of the forces which led to civil war through a movement towards secession he did not know how to arrest.

The fact is that great leadership of a positive kind must, under the American system, come from the President or it will not count at all. No one else can command the necessary attention; and no one else can secure the appropriate authority. The Congress can give or deny support; it is not made, by its inherent institutional nature, to take the initiative. No Cabinet has the status necessary to force a weak man to become a strong one; and though the Supreme Court is profoundly

influenced by its political environment, the nature of its functions confines it to interstitial pronouncements upon the decisions of other men. Nor can the most powerful of private citizens hope to do more than bring great pressure to bear upon the President to give a lead. Men of the highest distinction were closely associated with George Washington during his two terms of office. We know with what eagerness both Jefferson and Hamilton urged upon him the direction he should follow; nevertheless the decisive choice was always a choice that Washington made. Seward's standing in the Republican Party was so much higher than Lincoln's in 1860 that he did not doubt that he would be the Mayor of the Palace under a merely nominal King; within a few weeks, he had learned that the office combined with the personality of Lincoln to make the latter his unchallengeable master. When weak men like Franklin Pierce or Warren G. Harding were in office, no one could fill the vacuum left by their inability to lead. Crisis apart, it may well be true that until America had reached the frontier, the periods in which no President sought to lead it were not a cause of serious set-back. But it may be argued with confidence today that a United States without leadership in so interdependent a world might well imperil not only its own fortunes but that of all Powers associated with its purposes; and that if it chooses as President (or, indeed, since death takes a heavy toll from those who win the supreme office the American people can confer, the Vice-President also) a man who fears to act with audacity and resolution, it skirts the boundaries of great dangers it may then, with all its strength and resources, lack the power to overcome. Great leadership is not an automatic gift of nature to a people which has need of it; the institutions and traditions of a country must be carefully prepared to secure its evocation.

There is perhaps one other remark it is worth while making. In the eighth chapter of his classic *The American Commonwealth*, Lord Bryce discussed the reasons "why great men are not chosen Presidents". He thought that fewer really able men were drawn into American politics than into European. He thought American political life gave fewer opportunities

than Europe to high distinctions, and that the mediocre candidate with a safe record was better regarded than the man who was original or profound. He did not, indeed, believe that the Presidency required a man of "brilliant intellectual gifts"; "four-fifths of his work", Bryce wrote, "is the same in kind as that which devolves on the chairman of a commercial company or the manager of a railway, the work of choosing good subordinates, seeing that they attend to their business, and taking a sound practical view of such administrative questions as require his decision." *Ceteris paribus*, he thought the candidate should come from a large state, the allegiance of which was in doubt, that it was undesirable for him to be a Roman Catholic or an infidel, and that the successful soldier in the Civil War, like Grant, was helped by his military reputation even if he had no experience in politics. Comparing the twenty Presidents of the United States and the twenty Prime Ministers of Great Britain in the years between 1789 and 1900, he regarded eight Presidents and six Prime Ministers as personally insignificant, while he put only four Presidents, Washington, Jefferson, Lincoln and Grant, in a "front rank represented in the English list by seven or possibly eight names." "The natural selection of the English parliamentary system", he concluded, "even as modified by the aristocratic habits of that country, had more tendency to bring the highest gifts to the highest place than the more artificial selection of America."

Bryce's book was first published in 1888, in the Presidency of Grover Cleveland, when the first great wave of indignation against the practices of the "gilded age" was beginning to crystallize into a system of genuine principles. What he wrote about the barriers against the choice of a Roman Catholic, an infidel, or the citizen of a small state is still justified. But it is at least arguable that his whole case was falsely grounded, and if we make a numerical comparison between great American Presidents between Washington and Franklin Roosevelt, and great British Prime Ministers between the younger Pitt and Mr. Churchill, the advantage is as much on the American as on the British side. It must be noted that we

do not know the "seven or possibly eight names" among British Prime Ministers whom Bryce placed in the front rank; and while it is true that Grant was a very successful soldier, that no more entitles him to a place among great Presidents than his remarkable military campaigns entitle Wellington to a place among great Prime Ministers. It is obvious that he did not regard great leadership as a Presidential function; it was probably the mental climate of the time that made him suggest that a good President could do his job with the same qualities that made a man a good chairman of a large commercial company. He emphasized the need for honesty with great vigour, no doubt because, before 1900, most of his visits to the United States were made in a period of grave and profound corruption which left neither Congress nor even the President untainted. But it is difficult not to conclude that Bryce's conception of the "front rank" was, Lincoln apart, formed from the pattern of the "scholar and the gentleman" who, because of the special British traditions into which he himself was born, mostly occupied the two front benches in both Houses of Parliament.

Yet in the sixty years since he wrote, many of his major conceptions may be said to have become outmoded by the larger historical perspective in which they can now be set. Most people would agree that, between 1789 and 1945, the great Prime Ministers were Pitt, Peel, possibly Palmerston, Disraeli, Gladstone, Lloyd George, and Churchill—at most seven names, two, at least, of whom were not "scholars and gentlemen", in Bryce's sense of the phrase. In the same period in the United States, it would be now generally agreed that Washington, Jefferson, Andrew Jackson, Lincoln, Theodore Roosevelt, Woodrow Wilson, and Franklin Roosevelt, were quite certainly in Bryce's "front rank", whatever the criterion by which he made that choice. If we move from the front rank to the second, with men like Monroe and John Quincy Adams, Tyler (whom Bryce much underestimates), Cleveland, Taft, and, perhaps, James Madison, we have men who compare favourably with Lord John Russell, Salisbury, Balfour, Campbell-Bannerman and Asquith,

who are hardly their superiors. It is, no doubt, true that remarkable men like Clay and Calhoun and Webster, all missed the Presidency when contemporaries of far less ability attained it; but in each case their failure is explicable in terms of defect of character that, on the whole, is a tribute to the delegates who decided against them. And an Englishman, in any case, ought to remember that Fox and Burke, Brougham and Cairns, Cobden and Joseph Chamberlain, Harcourt and Morley, were all of them outdistanced in the race for leadership by men of lower capacity. Nor is it without significance that if "artificial selection" in the United States excluded Clay and Calhoun and Webster, what Bryce calls "natural selection" in Great Britain also excluded Lord Randolph Churchill and the great Irish leader, Parnell, from the influence that should have been theirs. And if men of such poor capacity as Franklin Pierce and Warren Harding became Presidents, Great Britain has little reason to be proud of Prime Ministers like Lord Goderich and Neville Chamberlain.

All in all, the United States has thus far been fortunate in that, in most of its great crises, circumstances have combined to procure for its citizens a man proportionate to their problems. That need not, of course, be the case; and the working of the system points to nothing so much as the urgent necessity to make it as probable as human foresight can offer assurance that the pressure to choose the compromise candidates is replaced by an equal pressure to make the road direct to the choice of candidates whose power to lead has been shown by performance, and not inferred from the half-hidden obscurities of dubious manoeuvre. The immense power of the American people makes great Presidents more continuously necessary to its destiny than at any previous time. There is no other security that its massive strength will be employed with the wisdom and the insight proportionate to its historic responsibility.

THE RELATION OF THE PRESIDENT TO CONGRESS

by WILFRED E. BINKLEY

(Professor of Political Science, Ohio Northern University; Visiting Professor at Oxford University, 1949-50)

THE relation of the President to Congress, though never static, has been conditioned by deep-seated and persistent forces throughout American political history. The Executive as an organ of government got off to a bad start in the colonial period where it originated in the office of the colonial governor. All too often the King treated the appointment of this official as royal patronage to be dispensed to some court favourite. So lucrative indeed were the perquisites of the office that an appointment was considered a means of mending a broken fortune and to make matters worse, from the point of view of the colonists, the appointee frequently remained in England enjoying the emoluments of the office while a lieutenant-governor performed his functions in the colony. Here was a situation that intensified the habitual vigour of the colonial assembly's check upon what they considered potential executive despotism and they missed no opportunity to trim the governor's powers.

Even the governor's salary depended upon appropriation by the colonial legislature and he was consequently compelled to come to terms with the legislators at the same time that he struggled, as best he could, to execute his royal commission as governor. So he was reduced practically to the necessity of coming, hat in hand, to the door of the legislature begging for funds to carry out his duties and legislatures drove many a hard bargain with him. Indeed legislatures developed such habits as prescribing minutely detailed statutory provisions, by-passing the Governor by assigning the execution of laws to administrative commissions, and even circumventing the governor's appointing power by appropriating salaries, not to

the offices, but to named persons. No wonder, it has been said, that the American Revolution was over twenty-five years before Lexington.

A consequence of colonial experience was the conviction that political power, particularly executive power, is so dangerous that it must be checked with power. Early Americans would have reached this conclusion if they had never heard of Montesquieu but, if philosophy is to provide us good reasons for what we want to do anyhow, then *The Spirit of Laws* was made to order for the Founding Fathers. Suffice it to say that a deep-seated suspicion that implicit tyranny lurks in the executive office was planted early and persists to this very day in the American tradition, complicating the problem of integrating the determination of public policy with its execution.

So persistent are habits of mind that when the colonies, during the Revolution, made the transition to states, despite the powers with which the Governor was invested, that official became so subservient to the legislature that Madison, in the *Federalist* papers, declared the governors to be mere "ciphers" while the legislatures were "omnipotent". So obnoxious had the very term "Governor" become, as a consequence of colonial experience, that four states had discarded it and substituted the title "President". The framers of the federal Constitution in 1787, in creating the federal Executive, synthesized and fortified the provisions of several state constitutions for their executives with the consequence that the President of the United States, historically considered, is a sort of glorified state governor. This certainly did not extirpate the traditional legislative suspicion of the Executive. Just as the Speaker of the colonial assembly considered himself the people's champion in defying the Governor, so the speaker of the state legislature and in turn the speaker of the national House of Representatives confronts the Executive as the assumed guardian of the people's interest. It is no accident that, despite the "dethronement" of the Speaker of the National House of Representatives a generation ago, that official stands today second only to the President in political power.

Historically then the President and Congress have been cast for opposite parts. Even without this there are unplanned configurations of usages that have tended to prevent the development of any such congruence of legislature and executive as obtains in a parliamentary system. The American Constitution, by assigning distinct functions to President and Congress, implied, while it did not specifically prescribe, separation of powers. The first Secretary of the Treasury, Alexander Hamilton, and his fellow department heads assumed that, like parliamentary ministers, they would propose and promote legislative measures in person on the floors of the Houses. But the prompt passage of an apparently innocent resolution requiring that they "report in writing" initiated a precedent unbroken to this day. The consequence was, as Joseph Story, an early justice of the Supreme Court observed over a century ago: "The Executive is compelled to resort to secret and unseen influences, to private interviews, and private arrangements, to accomplish his own appropriate purposes instead of proposing and sustaining his own duties and measures by a bold and manly appeal to the nation in the face of its representatives."

The Constitution provided for the election of the President by assemblies of notables meeting in each state to be selected by whatever method state legislatures might prescribe and casting their votes blindly without formal nominations. The unexpected emergence of a two-party system with definite candidates soon converted these Presidential Electors into automata, mere registrants of their party's choice of Presidential candidates. Moreover, in time, the democratic trend compelled state legislatures to prescribe the popular election in each state of its Presidential Electors and thus the President has come to be practically the popular choice of the entire American electorate. In this way a compelling usage utterly changed the intended method of electing the President. But this almost direct election strengthened the President's hand and made Congress more suspicious of him than ever—at the same time that it tended to set him over against it.

Another usage that soon hardened into statutory pre-

scriptions affects profoundly the President's obligation to certain groups. This is the fact that each state elects its Presidential Electors on a general ticket and not by districts. Consequently the contest for Presidential Electors in each state becomes for each party a game of all or none. Since each state's number of Presidential Electors is roughly proportionate to its population, the big blocks of electoral votes of the populous states become the grand stakes for which Presidential candidates bid. All these large states have metropolitan centres with conscious ethnic, religious, and economic minorities each capable of swinging enormous electoral weights to either party. Among other things, this metropolitan vote is consumer-conscious rather than production-conscious and reacts accordingly toward pertinent issues such as rent and price controls and social security. Franklin Roosevelt could not have been re-elected in 1940 and 1944 without this metropolitan vote which simply swamped Governor Dewey's big majorities outside the great cities in half a dozen states that threw their great Electoral College ballots to Roosevelt.

The Great Depression had given Franklin Roosevelt his grand opportunity to vitalize the voting potentiality of hitherto dormant elements in the American population, especially the lower income groups. Since his advent no Presidential candidate of any party dare ignore the "have nots". It is no accident that all major party Presidential candidates since the 1930's have been outspoken proponents of civil rights, social security, and collective bargaining by labour. Presidential campaigns have consequently become literally competitions between candidates to outbid each other for the votes of the metropolitan masses who hold the balance of voting power in the states with the decisive Electoral College votes. At present and in the foreseeable future no candidate can hope to attain the Presidency without having pledged himself to the promotion of the welfare state.

The Congress of the United States is so constituted and so functions as to collide head-on with the major items of the only kind of programme that can elect a President. This is due to a set of practices and usages rather than provisions of the

Constitution. The Constitution, of course, provides that a Representative must be a resident of the state that elects him but to this a pernicious usage has added the inflexible requirement that he be also a resident of the single-member district that elects him. This compels him to be extraordinarily obsequious to the dominant interests of his constituency no matter what the national welfare calls for. In a politically close district the life of a Congressman can be made almost intolerable by the threats of every minority group that holds a balance of voting power. Unlike a Member of Parliament the Member of Congress cannot hope, if defeated, to stand for election in another constituency. National party leadership, Presidential or other, cannot easily influence a Congressman shackled by such a usage.

National elections have a tendency to become contests between the consumer-conscious masses of metropolitan centres who can determine Presidential elections and the production-conscious interests strong in the metropolitan suburbs, the smaller cities, towns, villages, and countryside which elect most of the Members of Congress. Here the prevailing ideologies, and practices, and the usages within Congress itself distort the national representative system of both Senate and House so as to load the dice overwhelmingly against consumer interests. For example, the consumer demand for the maintenance of price controls in order to check inflation was doomed by the irresistible weight of the non-urban constituencies, and Truman's re-election in 1948 was partly due to his vigorous stressing of this issue in condemning the Eightieth Congress. It was the intention of the Constitution that after each decennial reapportionment of representatives from each state the state legislatures would re-map the Congressional districts so as to maintain equal populations in each. But the legislatures, even in many industrial states, are controlled by farmers with the consequence that re-mapping Congressional districts is delayed, sometimes more than a generation. Meanwhile rapidly growing urban constituencies accumulate populations in some cases a dozen times as great as those of declining rural districts, which take on at least

a trace of the character of rotten boroughs. The effect is to overweight the production-minded representation in Congress as much as it reduces the fair weight of consumer representation.

There is another usage that loads the dice against consumers more heavily than anything else, at the same time that it makes party government in Congress a sheer impossibility. This is the use of seniority, that is, length of continuous service, as the sole determinant of the chairmanships of the standing committees. In contrast with the standing committees in the House of Commons each of those in the American Congress considers bills in a special area of legislation, and is in fact a little legislature with almost the power of life and death over any measures referred to it. Enormous prestige and influence attaches to the chairmanship of one of these committees. Since long continuous service determines the chairmanship it simply signifies that a chairman has been elected again and again without interruption and that he consequently represents practically a one-party district. The metropolitan districts on the contrary swing from one party to another frequently enough that their representatives seldom accumulate the continuous service necessary to attain a committee chairmanship. This means that, when the Democrats have a majority in the Houses, the sovereign power rests in the hands of conservative Southern Democrats. This is why the New Deal legislation practically ended with President Roosevelt's first term and why President Truman is helpless in his efforts to fulfill the pledges of the Democratic platform of 1948 on which he was elected, such as civil rights and repeal of the Taft-Hartley Law. When Republicans control the Houses the committee chairmen are mainly from non-metropolitan constituencies and consumers get as scant consideration in legislation as when the Democratic chairmen control.

The British parliamentary system, dependent as it is upon a set of well established British usages, is out of the question in the United States with its very different set of political usages. Yet, sooner or later, there must be found a better way of integrating the formulation and execution of public policies in the United States. Nor is a solution likely until a

way can be found for getting party government established at Washington. American political parties are little more than loose federations of state parties, integrated temporarily on a continental scale at four-year intervals by a brief paroxysm of campaigning to capture the patronage, prestige and power of the Presidency. Until the turn of the century the issues of the Civil War and its aftermath had given the major political parties the emotional drive of religious faiths. Republicans in tremulous tones proclaimed the conviction: "The party that saved the nation must rule it", while Democrats vehemently defended the powers reserved to the states by the Constitution of the Fathers. But the emotional drive of a living faith evaporated long ago with the consequence that when asked his political affiliation, many a voter replies: "I have no party: I always vote for the best man." Participation in caucuses and other party activities is discountenanced and the Institute of Public Opinion recently found a majority of American parents saying they would not want their children to enter politics. The cult of non-partisanship, which unfortunately includes too many political scientists, has resulted in the introduction of the non-partisan ballot. It must be confessed, however, that politicians and voters circumvent quite generally the efforts to abolish party contests by statutory provisions for non-partisan ballots.

The anti-party ideology is none the less potent and makes difficult the establishment of party government which is a *sine qua non* of effective democracy. The American Political Science Association has recognized the importance of this problem by establishing a standing Committee on Political Parties "with a view to suggesting changes that might enable the parties and voters to fulfil their responsibilities more effectively". The chairman of the committee, Professor E. E. Schattschneider, doubtless expressing an emerging committee consensus, concludes: "Once members of Congress, the President, and the higher executive personnel appreciate the advantages of cohesion, it is likely that they will find ways of establishing it" and he believes that "the party which first masters the technique of cohesion will have a phenomenal political success".

Doubtless the time will come when the Democratic party will have to crack down on such party secessionists as the Dixiecrats who organized a party to prevent the re-election of President Truman. Surely such saboteurs cannot hope continuously to enjoy party patronage and the chairmanships of the great committees that empower them to wreck the party platform and the President's programme. The Republicans in the Eightieth Congress, which immediately preceded the present one, attained, at times, an astonishing cohesion under Speaker Joseph Martin. It had long been assumed that the Congressional revolt of 1910 which "dethroned" the Speaker by depriving him of the power to appoint the committees and by removing him from the Rules Committee which decides which measures get before the House had decisively emasculated the speakership. But Speaker Joseph Martin may have been as masterful in 1948 as Speaker Joseph Cannon was forty years ago. Otherwise why were there in the Eightieth Congress only three Republican votes against the red hot Wolcott Housing Bill to 236 Republican votes for it and wherefore the absolute unanimity of 236 Republican votes against sending the controversial Knutson tax bill back to committee? Cannon never had more perfect party regimentation. Now and then a recalcitrant Republican Representative may be privately reminded by the Speaker that the party's national campaign funds are available to retire him by financing a rival candidate of his own party at the next nominating primaries. A Member of Parliament would understand such a warning. The cry of dictatorship may be raised against such a Speaker, but Americans must learn that there can be no party government without party discipline. The Republicans may be approaching it in the House of Representatives.

There is a pronounced trend in Congress toward looking to administrative agencies for the initiation and shaping of measures for the consideration of the committees. George B. Galloway says that half the bills now originate in the executive departments. Whenever President Franklin Roosevelt made a recommendation, Congress learned to expect a bill with the last "t" crossed lying right under the message. At first Republi-

cans stormed at such executive presumption, but so accustomed had they become to the practice that in 1947 a leading Republican Senator, Homer Ferguson, criticized President Truman for making an informal suggestion of a measure without sending a message accompanied by a bill.

The co-ordination of the Executive and Congress may yet be institutionalized by the creation of a Legislative-Executive Council. It could consist of Congressional leaders and members of the President's Cabinet. An emerging consensus points to such a development which would violate no essential American tradition and would require no constitutional amendment. The idea of such an organ in the national government was first suggested by Senator Robert M. LaFollette in the July, 1943, issue of the *Atlantic Monthly*. His State of Wisconsin had such a council as early as 1931. The LaFollette-Monroney Congressional Reorganization Act of 1946 contained a provision for a joint Legislative-Executive Council when the measure passed the Senate. It is believed that its elimination by the Lower House was due to the influence of the Speaker who probably thought his power might be reduced by it. Its defeat was a keen disappointment to American scholars in the field of politics. The Council could be created by a joint resolution of the two Houses and an Executive Order of the President. Its membership probably ought to consist of the Vice-President, the Speaker of the House, the majority party floor leaders of the two Houses, chairmen of major committees, and designated Cabinet members. Meetings should be held regularly for consideration of the formulation and the execution of national policies. The Council might be held responsible for the setting up of the legislative programme in consultation with the President. Its success would depend, however, as in the case of every governmental device, upon the usages that developed in connection with it.

THE AMERICAN CABINET

by FREDERIC A. OGG

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IN *The American Commonwealth*, published in 1888—the first book in which the governmental system of the United States was ever fully and adequately described—James (later Lord) Bryce truly observed that in America there was “no such thing as a cabinet in the English sense of the term”; and then, recognizing that the term had no less currency in the United States than in his own country, he devoted a ten-page chapter principally to discussing what the American Cabinet was not rather than what it was. That he clearly understood the situation was evidenced by his characterization of the American Cabinet as, like the English, a product of custom rather than of law, and especially by his sage observation that “one cannot properly talk of the cabinet apart from the President”. For in the American “Presidential” system, a cardinal principle is the concentration of the executive power—all executive power—in the President, with the Cabinet, as such, having neither being nor function except as drawn from that high official. Since Lord Bryce wrote, however—and particularly in the past twenty years—the most conspicuous development in American government has been the tremendous growth of the Presidency in prestige and power; and with this has come increased importance for every agency—the executive departments, establishments like the Bureau of the Budget gathered under the broad roof of the lately developed Executive Office of the President, the Civil Service, and indeed the Congress. Even the Cabinet, although hardly to be regarded as an instrument of power, has been pulled upward to a higher level of significance. And although one writing for readers to whom “Cabinet” means what it normally means in England cannot wholly

avoid Lord Bryce's somewhat negative approach, it may be possible to present a somewhat more direct and positive picture of what the American Cabinet is to-day, how it functions, the uses it serves, and the ways in which some people propose to modify and strengthen it.

Framers of the American Constitution in 1787 were, of course, familiar with the English Cabinet as it then stood and certainly with governors' councils as found in all of the states. From the outset, however, their eyes were fixed on a system of separated powers leaving no room for a Cabinet of the English sort; and although many plans were advanced for associating with the President a council of some description, no one of the number prevailed. That future Presidents would stand in need of advice was well enough understood; and on matters relating to individual executive departments they were expressly authorized to "require the opinion, in writing", of the appropriate department head. For advice on more general lines, however, it was expected that they would rely principally on the Senate which, starting with only twenty-six members and already constitutionally associated with the President in appointments and treaty-making, would serve the dual purpose of a legislative branch and an executive council.

Matters, however, did not work out in this way. On the very first occasion when President Washington presented himself in the Senate to consult on public business, the demeanour of the members clearly showed that they took a different view of their functions; and the expected relationship did not develop. In another direction, too, the President was rebuffed, when, seeking from the new Supreme Court its opinion on certain constitutional issues, the reply was that the judges could render such opinions only in deciding actual cases. At the same time, the House of Representatives was making it perfectly plain that heads of executive departments were not welcome on the floor of that body for presenting reports, answering questions, or indeed for any other purpose. The all-round effect of these various reactions was, of course, to throw the President and his department chiefs

back upon their own resources and into greater mutual dependence than otherwise might have arisen; and out of this, in very large measure, arose the Cabinet. From as early as 1791, there are scattered records of meetings of the President with his department chiefs; and in 1793, the danger of foreign war caused such consultations to grow more frequent and even regular. In this latter year also, the term "Cabinet" began coming into use, although President Washington himself seems never to have employed it.

From the period indicated to the present, the American Cabinet, such as it is, has had a continuous history. There have been ups and downs—strong Cabinets and weak ones, periods of eclipse while Presidents looked elsewhere for advice; and (never referred to in a Presidential message until 1829 or indeed in a statute until 1907) the agency remains to this day so purely a matter of custom that if some President should decide to dispense with it altogether (as one or two Presidents in effect have done for brief periods), not a constitutional or legal question could be raised concerning his right to do so. As indicated below, various other persons have at times been, and are to-day, invited to be present at Cabinet meetings; but, viewed strictly, the body has always consisted simply of department heads sitting under the chairmanship of the President. Starting at three in 1789, departments (all created by act of Congress and essentially co-ordinate) grew to ten in 1913, when a Department of Commerce and Labour was divided into two. More recently the situation has been modified somewhat by the National Military Establishment being turned into a Department of Defence with a Secretary in the Cabinet, while the Secretaries of the Army, the Navy, and the Air Force, although heading "departments", have dropped out of the Cabinet circle; also, proposals are pending for the creation of one or two new departments, whose heads would without doubt be of Cabinet rank.

In any event, the Cabinet as of to-day consists of the Secretary of State, the Secretary of Defence, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labour, the Secretary of the Interior, the Secretary of

Agriculture, the Postmaster-General, and the Attorney-General, the last-mentioned heading an integrated Department of Justice such as has often been proposed for Great Britain but never actually introduced. Various department chiefs familiar in European countries, *e.g.*, ministers of colonies, education, public works, and home affairs, find no counterparts in the list—not because the functions are not in most instances provided for, but because for varying reasons they are not devolved upon separate, co-ordinate departments. The fact may be reiterated that, although departments exist only by Congressional act, their heads (and therefore all regular Cabinet members) are in every case appointed by the President, with the consent of the Senate, and also in every case responsible only to the President, who may independently remove them if and when he chooses. All are on a general footing of equality, although because of the critical nature of his tasks, the Secretary of State enjoys a certain extra-legal pre-eminence; and under legislation of 1947 he tops the list of department heads who, in a prescribed order, follow the Vice-President, Speaker of the House of Representatives, and President *pro tempore* of the Senate as mid-term successor to a deceased, incapacitated, or removed President.

Before turning to the Cabinet's functioning and influence, it may be of interest to glance at various factors entering into the selection of its members. Save for the necessity of securing Senatorial confirmation for his nominees (by simple majority vote), the President's freedom of choice is constitutionally complete; and the limitation mentioned is in practice so slight that in over 160 years only seven names offered have ever been rejected. With department heads constituting the President's official family, and with him accountable for all their official acts, it is recognized as only fair that he be left unrestricted in selecting them, regardless of whether he and his nominees are or are not of the party dominant at the given time in the Senate. But this does not mean that in making his choices, when constructing a new Cabinet at the beginning of his administration or when filling vacancies

as they arise, he will not have to bear in mind, and more or less be guided by, many different, and perhaps troublesome, practical considerations.

First of all is the need for party solidarity. With no organized parties in the field, President Washington started off with the rather natural idea of giving representation to opposing schools of political opinion, and to that end included in his original Cabinet both Alexander Hamilton and Thomas Jefferson. The plan, however, did not work, and, with political parties presently coming into the field against each other, even the Washington Cabinet ended by becoming solidly Hamiltonian, or "Federalist". Jefferson's entrance of the new White House in 1801 saw a complete shift to Republicans; and from that time onward it always could be taken for granted that an incoming President would construct his Cabinet entirely from members of his own party. In scattered instances, to be sure, personal or other special considerations have led to the inclusion of an outsider or two: President Cleveland, a Democrat, appointed as Secretary of State a man who had even been thought of as a Republican candidate for the Presidency; Presidents Theodore Roosevelt and Taft, Republicans, appointed Democratic Secretaries of War; and in the face of an increasingly menacing international situation, President Franklin D. Roosevelt, in 1940, drew into his Cabinet circle, as Secretaries of War and Navy, respectively, two well-known Republicans—one (Henry L. Stimson) not previously active in partisan affairs, but the other (Frank Knox) only four years previously the candidate of his party for the Vice-Presidency.

Other practical considerations more or less influencing the President's choices include representation for various wings or factions of his party, geographical distribution, obligations incurred for political support, and personal friendship. To conciliate and ensure support from the more radical wing of his party, President Wilson, in 1913, made William Jennings Bryan his Secretary of State; and although actually resulting in what has been characterized as "the most uncongenial and contentious group ever assembled

beneath the White House roof", President Lincoln, in 1861, made an effort, at least, to win harmonious backing for his Administration by giving Cabinet representation to as many as possible of the discordant elements embraced in the then young Republican party. Geography, too, must be kept in mind. It will not do to take all appointees from the East, or from the West, or from any other single section of the country—although occasionally there have been two, or even three, from the same state (most often New York). Selections must frequently be made, also, with a view to rewarding individuals (or groups behind them) who have aided conspicuously in the President's election—perchance as chairman of the victorious party's national committee, as in the case of Will H. Hays and James A. Farley. Still another influential factor is personal association and friendship. Every President takes into his official family men whom he knows but slightly; but he is likely to include also one or two who, whatever other claims they may have, are first of all personal friends.

Cabinet members have, of course, the dual function of administering an executive department and sharing in advising the President; and presumably they are selected with both in mind. In their administrative capacity, at least, they have, over the years, most commonly been amateurs, in the sense of not having had experience in or with the department over which they are called to preside; and in this, they have much in common with the general run of Ministers of the Crown in Britain. In choosing them, the President, however, has a rather wider range of choice than a British Prime Minister enjoys; because, whereas the latter ordinarily must select only from among parliamentary members of his party, and from actual or potential party leaders, American Cabinet members not only must come from outside rather than inside the Congress, but are not ordinarily expected to be party leaders at all. Speaking broadly, in fact, the American Cabinet has tended to become less and less a group of party leaders; half or more of the members of almost every recent Cabinet had never, when chosen, been active in the politics of either state or nation. Politicians

have been included, of course; but a steadily increasing proportion of Cabinet appointees have been chosen (with factors mentioned above playing their part) for their experience or their administrative ability (proved or presumed), though, as indicated, not usually in the Department to which they are assigned, or even necessarily in public life at all. Many have attained eminence in the business or professional world—outstanding illustrations in the past thirty or forty years being Elihu Root, Andrew W. Mellon, William G. McAdoo, and Herbert Hoover. An incoming President rarely carries over any members of the Cabinet of his predecessor, even when of the same party; and although a President suddenly brought into office by the death of his superior naturally makes few, if any, Cabinet changes immediately, he usually will be found reconstructing the group to his own satisfaction within a decent period of time—four of President Roosevelt's appointees dropping out before President Truman, in 1945, had been in office a month and a half, and all of the remaining ones disappearing (in some instances by their own choice) within but little over a year.

It was, of course, out of the early formed habit of department heads coming together for discussions with the President that the Cabinet arose; and the Cabinet *meeting* is still the most visible evidence of the institution's existence. Nowadays, the body convenes around a large oval table in a room in the White House set apart for the purpose, with the President at the middle and the members flanking him in the order of seniority; and meetings (frequently attended by the Vice-President and any other high administrative officials whom the President may invite) take place ordinarily once a week—now on Fridays—though naturally oftener in time of war or other stress. Ranging widely over problems and policies of the Administration (not omitting their party aspects), discussions are directed mainly to matters, large or small, which the President himself introduces, although others may be brought up—usually with consent secured in advance—by the department chiefs. The atmosphere of meetings varies a good deal under different Presidents. Under Franklin

D. Roosevelt, they were likely to be long and leisurely (often two hours), with everyone allowed opportunity to say what was on his mind, though with the President sometimes more or less monopolizing the time, and often largely with stories of the past. Under President Truman, they are more crisp, with the Chief Executive sometimes obviously watching the clock. In any event, proceedings are decidedly informal. There are no rules of debate; free interchange of opinion takes place in a conversational manner; only rarely is there a vote; as in the British Cabinet before World War I, no minutes or other official records are kept, and sometimes differences of opinion develop as to how a given matter was disposed of or even whether it was considered at all. Furthermore, such decisions as are reached are mere recommendations. The American Cabinet is not a *government* as is the British; and just as the President is free to submit or not submit any given matter for consideration, so is he free to make any final disposition of it that he chooses. Ordinarily, he will be influenced by the views of the men whom he has chosen to be his official advisers. But if he thinks their advice unsound, he is under no compulsion to follow it. It is he, not they, who will have to bear ultimate responsibility before the country for whatever is done or not done. "Seven nays, one aye—the ayes have it," announced President Lincoln following a Cabinet consultation in which he found every member against him. Cabinet discussions bring out useful information and opinion, clarify views, and promote morale in the Administration. They help the President pick his course in both domestic and international affairs. But they do not culminate in decisions upon policy by mere show of hands.

Throughout the country's history, there have been strong Cabinets and mediocre ones, with the mediocre undoubtedly preponderating. An able Cabinet can go far toward making up for the deficiencies of a weak President, and can lend added strength to a strong one. But for one reason or another most Presidents do not command the services of more than a rather ordinary Cabinet group. Furthermore, some Presidents

make a good deal more use of their Cabinet than do others. Looking upon the heads of departments as simply administrative officers, and preferring the advice of a coterie of personal friends, official or otherwise—the so-called “Kitchen Cabinet”—President Jackson early abandoned meetings of the regular Cabinet altogether; and some of his successors, *e.g.*, President Grant, much of the time President Wilson, and in his first years President Franklin D. Roosevelt, leaned but lightly on their Cabinet advisers. In the case of Roosevelt, the Cabinet, in the depth of the depression, was from one side quite submerged in a sort of super-Cabinet, known as the National Emergency Council and consisting, in addition to the heads of departments, of some two dozen heads of new “recovery” agencies; and from a different direction was pushed into the background by a so-called “little Cabinet” consisting of the well-known “brains-trusters”. In time, the regular Cabinet emerged in something like its customary stature. But almost to the end, some of Roosevelt’s principal advisers held no Cabinet posts at all; and even as bold and contentious a project as the 1937 plan for reorganization of the Supreme Court went to the Cabinet only as an eleventh-hour announcement of a decision already made. On the other hand, certain Presidents, *e.g.*, Pierce and Harding, have consulted their Cabinets at every turn and have usually followed the advice received.

British readers, accustomed to look sceptically, if not disapprovingly, upon the separation of powers so basic to the American system, will not be surprised to learn that the topmost objective in present-day efforts to improve the country’s national government is closer and more effective relations between the executive and legislative branches, still tending to occupy “two islands of separate and jealous power”, with resulting delays, deadlocks, weak compromises, and divided responsibility. And the Cabinet comes into the discussion in a number of ways. One of the mildest proposals, heard for decades past, is to give Cabinet members the privilege of the floor in both branches of Congress, not as members or with votes, but merely to afford opportunity

for giving information, answering questions, and engaging in general debate. So modest a step in the direction of a Cabinet system would call for nothing more than possibly some slight revision of the rules of the two Houses. But there is no present prospect that it will be taken; appearance of department heads before Congressional committees, now common enough, is generally regarded as sufficient. A second suggestion is that the two branches be more effectively tied together through the medium of a joint legislative-executive Council or Cabinet, in which some specified number of Congressional leaders (including committee chairmen) would be joined with the present Cabinet, or some portion of it, for discussion of policy and harmonizing of interests. The Joint Committee on the Organization of Congress which prepared the way for the important Reorganization Act of 1946 recommended this; but though the Senate approved, the House of Representatives did not agree.

Finally, it is, of course, not to be overlooked that proposals are heard for scrapping the separation of powers completely and frankly going over to something like the British Cabinet system. Such suggestions come, however, only from occasional writers of books (most commonly journalists) and now and then from professional students and teachers of political science, who, however, are more likely to confine themselves to extolling the virtues of Cabinet government where it at present prevails, but warning that it might not work as well in a country like the United States with different traditions. Neither in government circles nor among the people at large is there any idea that so sharp a break with the American past is feasible or necessarily desirable. In one or two of the ways referred to, the American Cabinet's usefulness in policy formation, and even in the legislative process, may in time be increased. But so long as the Presidency remains what it is, no possible room will be afforded for the group to become a *government*; and we have the word of one of our ablest constitutional lawyers for it that "the power and prestige of the Presidency comprise the most valuable political asset of the American people."

THE UNITED STATES BUREAU OF THE BUDGET

by ROWLAND EGGER

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I

THE executive budget in the national government of the United States is the creation of the Budget and Accounting Act of 1921. But there is little in the provisions of the 1921 legislation relating to the budgetary process that improves materially upon the understanding of the responsibility of the executive branch for budgetary leadership entertained by Alexander Hamilton, the first Secretary of the Treasury. Indeed, the law of 1789 establishing the Treasury Department made it the duty of the Secretary "to prepare and report estimates of the public revenue, and the public expenditures". And in 1800 a supplementary act directed the Secretary "to digest, prepare and lay before Congress . . . a report on the subject of finance, containing estimates of the public revenue and expenditures, and plans for improving or increasing the revenues, from time to time, for the purpose of giving information to Congress in adopting modes of raising the money requisite to meeting the public expenditures". Both Hamilton, who served from 1789 to 1795, as well as Albert Gallatin, (subsequently commissioner to Great Britain) who was Secretary from 1801 to 1814 under appointment of Hamilton's arch-enemy Thomas Jefferson, sought to build the American Treasury into a replica of the British Treasury, and the post of Secretary into an approximation of that of the Chancellor of the Exchequer. Neither succeeded, in part because of Congressional jealousy of the Executive, in part because Treasury power became an issue in the emergence and solidification of partisan cleavages in the Congress, and in part because the structure of government established under the Constitution interposed serious obstacles

to the development of a Federal Treasury occupying, under the Presidency, a position of *primus inter pares*.

Following the failure of Gallatin to establish the principle of substantive review of departmental estimates prior to their submission to the Congress, the Treasury function, in respect of budgetary matters, became a merely routine one of collecting and printing the estimates, in accordance with statutory requirements, and of transmitting them to the Congress. In fact, the *longue et heureuse suite d'usurpations* to which Léon Blum attributes the dominant position of the British Treasury was enacted in complete reverse, and the language contained in Section 3669 of the Revised Statutes at the time of the adoption of the Budget and Accounting Act, providing that "all annual estimates for the public service shall be submitted to Congress through the Secretary of the Treasury, and shall be included in the book of estimates prepared under his direction", was generally understood to preclude any revision or control of departmental estimates by the Secretary of the Treasury.

II

The Budget and Accounting Act of 1921 was by no means as comprehensive in its underlying philosophy as were the conceptions of Hamilton and Gallatin. Those who formulated the Act did not conceive of it in terms of implementing the responsibility of the President for the management of the executive branch of the Government. The elemental fact seems to be that the Congress was thoroughly frightened by the dimensions to which Federal expenditures had grown in the course of the first world war, and sought to create machinery for controlling and reducing expenditures while at the same time exonerating the legislative branch of any complicity in their unprecedented expansion. The Bureau of the Budget was conceived both in the Congress and in the executive branch to be an instrumentality for the prevention, or in case prevention was impossible the reduction, of expenditures. Its potential significance as an instrumentality of administrative management and of executive policy was almost completely unremarked. However, since no President for the

ensuing twelve years was to interest himself effectively in administrative management, or in fact to have an executive policy, budgetary or otherwise, this inadequate view of the machinery created by the new Act had no important practical consequences.

General Charles G. Dawes, who had been Pershing's Chief of Procurement in the A.E.F. in 1918 and was subsequently to achieve further distinction as author of the Dawes Plan, as Ambassador to Great Britain, and as Vice-President of the United States, became the first Director of the Budget. He gave colourful and vigorous leadership, yet withal a narrow and essentially negative orientation, to the new organization. After a year of service, he was succeeded by General Lord, and in due course Lord was succeeded by Lieutenant-Colonel J. Clawson Roop, all of whom had been associated with Dawes during the first world war. However, since Mr. Andrew W. Mellon and Senator Reed Smoot took over the Government early in 1921 and ran it from their offices at the opposite ends of Pennsylvania Avenue for the next ten years, the Bureau of the Budget became an extremely minor factor in national fiscal affairs.

With the election of Franklin D. Roosevelt and the reactivation of the Presidency in 1932, the Bureau of the Budget had another brief recrudescence, terminated by the disagreement within a year between the President and the Director, Mr. Lewis W. Douglas, over fiscal policy. Mr. Douglas was likewise destined to follow his distinguished predecessors, Mr. Gallatin and General Dawes, up the primrose path to the Court of St. James's. Despite these precedents, it is not to be understood that the Ambassadorship to Great Britain is in the regular line of promotion from the Directorship of the Budget in the American public service. For five years the Bureau of the Budget, located administratively in the Treasury, was headed by Mr. Daniel W. Bell, a career civil servant, who operated in a bifurcated capacity as acting director of the budget and assistant to the Secretary of the Treasury on fiscal and accounting matters. The administrative and fiscal history of the period gives little indication of any

especially significant impact of the Bureau of the Budget as a staff agency of the President.

III

In consequence of the work of the President's Committee on Administrative Management, the Bureau of the Budget was completely reorganized and reoriented in 1939. Under Reorganization Plan No. I, carried out in pursuance of the Reorganization Act of 1939, the Bureau was placed under the immediate direction of the President. Executive Order 8428 of September 8, 1939, transferring the Bureau from the Treasury to the Executive Office of the President, defines its functions as follows:

1. To assist the President in the preparation of the Budget and the formulation of the fiscal programme of the Government.

2. To supervise and control the administration of the Budget.

3. To conduct research in the development of improved plans of administrative management, and to advise the executive departments and agencies of the Government with respect to improved administrative organization and practice.

4. To aid the President to bring about more efficient and economical conduct of Government service.

5. To assist the President by clearing and co-ordinating departmental advice on proposed legislation and by making recommendations as to Presidential action on legislative enactments, in accordance with past practice.

6. To assist in the consideration and clearance, and where necessary, in the preparation of proposed Executive Orders and Proclamations, in accordance with the provisions of Executive Order 7298 of February 18, 1936.

7. To plan and promote the improvement, development and co-ordination of Federal and other statistical services.

8. To keep the President informed of the progress of activities by agencies of the Government with respect to

work proposed, work actually initiated, and work completed, together with the relative timing of work between the several agencies of the Government; all to the end that the work programmes of the several agencies of the executive branch of the Government may be co-ordinated and that the monies appropriated by the Congress may be expended in the most economical manner possible with the least possible overlapping and duplication of effort.

Mr. Harold D. Smith, at that time Director of the Budget of the State of Michigan and a public administrator of wide experience, was called by the President to head the Bureau of the Budget. Mr. Smith served from 1939 until 1945, when he resigned to become vice-president of the International Bank. He was succeeded by Mr. James E. Webb, who became Under Secretary of State in 1949. Mr. Frank Pace, Jr., who had been assistant director under Mr. Webb, is the present Director.

The Bureau of the Budget is essentially a unified agency. It is organized for operating purposes into five divisions and the field service. The divisions are based upon a process division of work, while the field service is an organization of generalists serving all of the operating divisions and the President. The several divisions and their work may be summarized as follows:

1. *Division of Estimates.* The Division of Estimates, through the budget officers of the departments and agencies, collects, reviews and holds hearings on annual budget estimates, revising and preparing them for the President's consideration and his presentation to Congress in the Annual Budget; reviews supplementary and deficiency estimates; continuously studies and analyzes the operations and fiscal requirements of all agencies of the Federal Government; and reviews at quarterly intervals the apportionments of appropriations and allocations and the estimated civilian personnel requirements of all agencies.

2. *Division of Fiscal Analysis.* The Division of Fiscal Analysis is organized to study the broad functional or activity categories of the Federal Budget. It is concerned

particularly with assuring consistency and balance with respect to the fiscal aspects of Government programmes. The Division prepares quarterly reviews and pre-views on the fiscal aspects and impacts of revenue and expenditure operations, and co-operates with the Estimates Division in the development of summary reports for the formulation and execution of the Federal budget.

3. *The Division of Administrative Management.* The Division of Administrative Management advises and assists departments and agencies of the Federal Government on problems of organization, administrative procedure, and management, and, in co-operation with other agencies concerned, develops improvements in Government-wide procedures in such fields as accounting, financial reporting, personnel processes, property management, and Budget administration, with a view to more effective conduct of the Government's business at less cost.

4. *The Division of Legislative Reference.* The Division of Legislative Reference reconciles and clears, for conformity with the established policies of the President, recommendations of the various departments and establishments with respect to proposed legislation, enrolled bills, Executive Orders, and other executive documents.

5. *The Division of Statistical Standards.* The Division of Statistical Standards, in accordance with the Federal Reports Act of 1942, provides co-ordination and promotes improvements in the statistical services of the Federal Government by analyzing and clearing plans and report forms used by Federal agencies on obtaining information from the public and from other agencies, and by other means described in the Act. It also co-ordinates the handling of statistical inquiries from inter-governmental organizations in accordance with Executive Order 10033. The Division does not collect statistics.

6. *The Field Service.* As a service arm of the Bureau, the Field Service reviews and scrutinizes existing and proposed agency operations and programmes, examines problem areas of agency management, organization and

methods; assists in improvement of working relations between the Federal Government and the state and local governments in specific programme areas; and promotes the co-ordination of Federal statistical and reporting services. Field offices are located at Chicago, Illinois; Dallas, Texas; Denver, Colorado; and San Francisco, California.

IV

The working methods of the Bureau of the Budget in relation to such matters as calls for estimates, review procedures, estimates mark-ups, administration of financial and personnel "ceilings", allotments, apportionments, deficiency authorizations, organization and methods surveys, legislative clearance, statistical co-ordination, etc., are beyond the purview of this brief essay. These matters are, in any case, related to the specificities of departmental and agency organization and work programme, and have little interest or application outside a very definite structure of administrative organization and procedure. The methods of Budget formulation and administration, and of Budget Bureau control, are vastly different even within the Federal Government with respect, for example, to the far-flung overseas operations of the Defence Establishment and the Department of State on the one hand, and the completely centralized and integrated Securities and Exchange Commission on the other.

The more fundamental question, rather, is how adequately the operations of the Bureau of the Budget serve the basic objectives of Congressional control of over-all Governmental policy and Presidential control of the work of the executive branch of the Government. In coming to grips with the facts necessary for formulating value judgments of this nature, it is convenient to consider the adequacy of the process of Budget formulation, the effectiveness of Congressional organization and methods in dealing with the President's budget and making appropriations in accordance with or in modification of it, and the successes and failures of budgetary administration and control.

No budget estimate is better than the intelligence and integrity which have gone into the planning and programming of work in terms of manpower, materials, and time, on which it is based. The Bureau of the Budget may review and revise estimates, but it can do little to improve the quality of the estimates prepared originally in the operating agencies. The Congress may amend or reject proposals, but if the proposals are ill-formulated and badly prepared in the first instance, legislative action is equally lacking in sound criteria. The greatest single weakness in the entire budget formulation process in the Federal Government is the general inadequacy of estimates preparation at the operating level. The poor quality of budget work at the operating level is attributable, in turn, to three factors.

First, the departments are themselves largely ineffective as instruments for programme planning, co-ordination and control. Most Federal departments and major agencies are extremely loose confederations of bureaux, and some of the bureaux are themselves loose aggregations of divisions. By and large, adequate staff facilities are almost wholly lacking at the departmental level, and few Secretaries have had either the time or inclination to weld the agencies under their purported control into unified organizations. The Post Office Department, for example, has traditionally had strong Assistant Postmasters-General who operate their bureaux virtually without supervision from the Postmaster-General, most of whose time has in the past been occupied with his duties as chairman of the national committee of the party in power. In the Interior Department the departmental budget function has actually never developed at all, and the bureaux handle their fiscal and administrative problems in a virtually autonomous manner; in fact, Interior has none of the attributes of a department except a Secretary. The budget operation of the Department of State, to cite another example, although in course of improvement, has not only been atrophied by internal particularism but paralyzed by the cleavage between the departmental and foreign services. Events in connection with Defence Establishment appropriations, even since

“unification”, have demonstrated clearly that the Air Force and the Navy are sadly deficient in their understandings of the substance of budgetary unity and integral programme. The Veterans’ Administration is also feeble from the point of view of programme co-ordination, and there is little interest in this sector in effective Budget planning; the extreme weakness of the Congress in dealing with the interest group which dominates this agency is an additional factor in the poor budgetary situation of the organization. This sad story of departmental ineffectiveness—in which the handling of Budget matters is only one, and probably not the most important aspect—might be reiterated almost endlessly. On the other hand, the high grade of departmental Budget operations in the Treasury, the Department of Commerce, and in certain other sectors of the Federal establishment give evidence of the possibility of achieving effective work planning and programming, and of building tenable budget estimates, in the presence of strong departmental management which enjoys the full confidence of the political head.

Second, the departmental Budget staff receives, in most sectors of the executive establishment, very inadequate support. Public and Congressional interest is naturally centred in the action programmes of the Government. The bureau chief or division head is responsible for the action programme. Since the Secretary or agency administrator does not share with the President any responsibility for the over-all fiscal policy of the Government, he has no special incentive to bring the departmental programme into balance or to seek to harmonize it with the more general objectives of the Administration. Few Secretaries or agency administrators, therefore, give the departmental Budget officer the support, *vis-à-vis* the bureau and division chiefs directing the “popular” action programmes, essential for effective programme planning and Budget preparation. The measure of the success of a departmental Budget officer, in fact, is his ability to obtain the maximum amount of money from the Bureau of the Budget and from the Congress, with the minimum of commitments regarding its use. As General Dawes

has somewhere bluntly remarked, "the Cabinet members are the President's natural enemies".

Third, while the evidence is somewhat conflicting, there are indications that the good work planning and programming, and the preparation and justification of Budgets on a work-programme basis, do not pay off in Congressional review of the budget. Cabinet officers and agency administrators are usually somewhat less than stupid, and when they observe, as they often do, carefully planned budgets, fully documented by workload and unit-cost data, cavalierly slashed by the Congress, while other budgets having more vociferous or more ruthless interest-group backing which the Congress is unwilling to risk offending ride through intact, it is little wonder that they choose to rely on organized political pressure instead of good planning. Adequate information, in fact, sometimes proves embarrassing to interest-group representatives attempting to force Congressional approval of estimates on the basis of non-logical arguments and threats of retaliation at the polls. Like the Oxford Union, the United States Congress more often votes its sentiments than its logical convictions, and John Stuart Mill's dictum to the effect that representative bodies consistently display a lower order of intelligence in their collective deliberations than is properly attributable to their members individually is daily vindicated in the actions of the United States Congress on budgetary affairs, *inter alia*.

V

The Budget estimates must, by definition, look in two directions. The President, in formulating the Budget, is not only synthesizing and co-ordinating his own proposals for conducting the business of the Government but is preparing the vehicle of his most significant act of legislative leadership and most important act of collaboration with the Congress. The Budget estimates must serve both purposes equally well. The Congress, in considering the budget estimates, and in making appropriations in pursuance or amendment thereof, is not only expressing the legislative will with respect to the policies of the Government, but is formulating a mandate

that must be susceptible of effective administration. The appropriations must serve both purposes equally well.

The appropriation process in the legislative branch, viewed in the large, has been conspicuously unsuccessful in achieving these ends. The estimates have not only failed clearly to present the President's plans and programmes, and to report on achievements under previous legislative authorizations, but they have on many occasions actually militated against Congressional understanding and control of Government policy. Appropriations have likewise failed to embody clear directives, and have frequently partaken of a spirit of muddled punitiveness. Bad blood has been characteristic of Executive-Congressional budget relationships regardless of political considerations; misunderstanding, bitterness and recrimination have been just as much a part of the estimates review and appropriation processes in years when the President had Congressional majorities as when the President and the Congress were of rival parties. Both branches share the responsibility for this condition. The Budget estimates have more than once attempted to secure the inauguration of policies and programmes which could not have obtained acceptance in general legislation. Appropriation act "riders" have on numerous occasions provided the means for Congressional invasion of Presidential authority and responsibility, and the nullification of the integrity of both legislative and administrative processes.

The Congress, moreover, has failed so completely to modernize its own machinery and procedures for considering the estimates and enacting the appropriations that it has defeated the most important objectives of the Budget and Accounting Act. The President presents a unified, complete and integral Budget, but Congress studies the estimates and works out the appropriations in almost exactly the same manner in which it operated in connection with the completely uncoordinated "book of estimates" presented by the Secretary of the Treasury prior to the establishment of the Executive Budget. Immediately upon receipt of the President's Budget, it is torn apart and the various sections par-

celled out to twelve sub-committees of the House Appropriations Committee. Congress never considers the Budget as a whole, and consequently never establishes any benchmarks for the consideration of its parts. A round dozen of completely separate appropriation bills are, sooner or later, reported by the sub-committees at various times, and these eventually reach the floor of the House unrelated to each other in terms either of policy, programme, money or time.

In 1946 the Congressional Reorganization Act did attempt to establish a Joint Committee on the Budget, and to move the centre of budgetary gravity legislative-ward by setting up a Legislative Budget. The performance of the Eightieth Congress under the provisions relating to Budget affairs contained in this Act was so ridiculous and so redolent of low comedy that even the most ardent advocates of the Legislative Budget idea have since been rather more than willing to forget about the entire matter. Under the leadership of Senator Taft, the Republican-dominated Joint Committee solemnly voted to reduce the President's budget by at least \$10,000 million, and on the basis of this promise proceeded to a reduction of the income tax levies. When the individual appropriation bills were reported from the sub-committees, they came in the aggregate to about what the President had proposed, and for approximately the same purposes and in the same amounts. The only way in which the Congress could save its face was to substitute "contract authority" for certain appropriations and to tell some agencies to "come back later" if the final appropriations were insufficient. The net result was actually to increase the obligated rate of expenditure.

If the President and the Congress are to discharge their common and overlapping responsibilities with respect to estimates and appropriations policies, the formalistic aspects of the separation of powers may have to be substantially modified. The President cannot legislate, although he must originate and justify the most important and complicated piece of legislation with which the Congress is confronted. The Congress cannot administer, although its decisions on the estimates have far more profound effects on administration

than even Presidential directives or departmental regulations. This argues strongly that if Congressional control of the purse is to be made effective, the reconciliation of Presidential and Congressional policies ought to have its roots in the formulation of the Presidential programme. By the same token, the reconciliation of Presidential administrative responsibility and Congressional control of policy ought to reach into the process of legislative consideration of the estimates and legislative action on the appropriations.

This is not to say that the dilemma of Executive-Legislative relationships in budgetary and appropriation matters cannot be resolved short of parliamentary government; it does not mean that Presidential control of administration must be destroyed, or Congressional control of policy enfeebled. On the contrary, a proper interpenetration of Congressional influence in the formulation of Presidential fiscal and budgetary policy and programme, and of Presidential "advice and assistance" in Congressional consideration of the estimates and enactment of appropriations might actually consolidate the authority of each within those phases of the process which are separate in fact. But until the Congress and the President are able to achieve a consultative *modus operandi* comparable to that which a number of American state governors have established with their legislative bodies, until the Congress has reorganized itself to deal competently with a consolidated appropriation bill subject to item veto by the President, and until the atmosphere of Executive-Legislative relationships is such as to permit full and free co-operation between the Bureau of the Budget and the appropriations committees of the House and the Senate, no substantial improvement in the end product of the budgetary process may reasonably be expected, no matter how much the technical processes of estimates preparation are refined and improved at the White House end of the Avenue.

VI

In 1865 Charles Macauley, Secretary of the Board of Audit, solemnly warned Parliament in these words:

"It would certainly be a great mistake if in discussing the principles upon which the proposed appropriation check should be established, Parliament were ever again led to confound the functions of Auditors with those of Controllers—the functions of officers whose duty it is to report what Government has done with the functions of those whose duty it is to decide what Government should do."

The Exchequer and Audit Departments Act of 1866 recognized this distinction. And although a number of the honourable members of the Congress thought that in enacting the Budget and Accounting Act of 1921 they were adopting a procedure closely analogous to the system of parliamentary audit of public accounts obtaining in Great Britain, they failed completely to understand Macauley's point. The Comptroller General of the United States is not an auditing officer, but a settlement officer. His function is to make the final administrative determination of the balances due to or from the United States on accounts between itself and its debtors or creditors. The Comptroller General of the United States, an officer appointed by the President with the advice and consent of the Senate for a term of fifteen years, and removable only by joint resolution of the Congress after notice and hearing, is not to be compared with the Comptroller and Auditor-General, but with the sum total of the English departmental accounting offices. Even this analogy breaks down under examination, since there is a very fundamental qualitative difference between a settlement made by an officer whose status in the administrative hierarchy places him in a position to make an intelligent and responsible certification of accounts, as in a British departmental accounting office, and one made by an officer by definition ignorant of the details of transactions, as in the General Accounting Office of the United States.

President Franklin D. Roosevelt's Committee on Administrative Management summed up in 1936 fifteen years of experience with the Comptroller General in these words:

"The results of the vesting of important executive

authority in the Comptroller General, an independent officer, who is not responsible to the Chief Executive, nor, in fact, to the Congress or the courts, are serious. Effective and responsible management of the executive departments is impossible as long as this unsound and unconstitutional division of executive authority remains. At the same time, the Congress is unable to secure a truly independent audit, which is essential if it is to hold the administration to a strict accountability."

In short, the Bureau of the Budget lacks the one indispensable tool of budgetary supervision and control—a system of accounting which produces regularly and currently the data required to manage and direct the execution of the Budget. Not only is the President's staff agency crippled by this deficiency, but the operating departments are not able to secure firm financial data necessary to the orderly operation of their programmes, since delays of from three months to three years are frequently encountered in the making of final settlements by the Comptroller General.

While the Secretary of the Treasury, the Comptroller General, and the Director of the Budget have latterly instituted a number of important and forward-looking changes designed to improve the utility of Federal accounting operations in the management of the Government, they are, as no one realizes better than themselves, patching up an essentially unsound set of institutions and procedures. The frustration of the Congress and the disgust of the general public with Federal financial statements is understandable, but the basic difficulty stems back directly to the fact that the Federal approach to accounting is preoccupied with the ascertainment and guarantee of fidelity in the handling of public monies, and disregards almost completely the production of intelligible financial data for management and for public reporting. In a national political and social economy in which the Federal Government collects and spends from one-third to one-fourth of the gross national product, frustration with and distrust of fiscal and budgetary operations are capable of producing serious consequences with respect to the national morale.

VII

The foregoing hypercritical review of the budgetary processes in the Federal Government will undoubtedly give aid and comfort, in some particulars at least, to critics of the Presidential system and to enemies of democratic government generally. But it would be a mistake to read a testimony of internal weakness into a healthy irritation at the slowness with which democratic government moves in correcting and improving its mechanical deficiencies, and in modernizing its management of fiscal and budgetary affairs. The achievements of the Bureau of the Budget since the reorganization of 1939, and more recently in consequence of the recommendations of the Commission on the Organization of the Executive Branch, headed by Mr. Herbert Hoover, have been truly notable. The technical processes of work planning and programming, and of budget formulation, have been vastly improved in recent years, and the end is by no means in sight. Serious deficiencies remain in respect of the improvement of departmental management, which is an indispensable element in the long-term improvement of Budget making and Budget execution, of the form and content of the Budget document, of Congressional organization and procedures for dealing with the Budget, of the form and content of appropriations, and of the Federal accounting system. And while history does not record that any nation ever fell because of the inadequacy of its book-keeping, it is also true that clear and understandable fiscal procedures contribute worthily to domestic peace and tranquillity, and even to a better and more sympathetic understanding of American potentialities and limitations in matters related to international commitments.

THE SUPREME COURT

by FELIX FRANKFURTER

(Associate Justice of the Supreme Court of the United States).

THE legislative history of the United States Senate began with a bill to implement article III of the federal Constitution, providing for the establishment of "one Supreme Court" and "such inferior courts as the Congress may from time to time ordain and establish." The scheme for a federal judicial establishment of which the chief architect was Oliver Ellsworth, himself a future Chief Justice, became law on September 24, 1789. There were many contenders for the Chief Justiceship and the five associates for which the first Judiciary Act provided, and not until February 1, 1790, was the day set for the organization of the Court. Even then a majority of the Court were not able to reach New York and the first formal session of the Court could not be held until the following day. From then on for a period of more than a century and a half the Supreme Court has maintained unbroken its very special relation to the constitutional scheme of American society, although during the first three years practically no business came before the Court. The Supreme Court mediates between citizen and Government; it marks the boundaries between state and national authority. This tribunal is the ultimate organ—short of direct popular action—for adjusting the relationship of the individual to the separate states, of the individual to the United States, of the forty-eight states to one another, of the states to the union and of the three departments of government to one another.

A tribunal having such stupendous powers inevitably stimulates romantic interpretation. Men of learning on both sides of the Atlantic have characterized the Supreme Court as the great political invention of the framers of the Constitution and have appraised it as their most successful contrivance. The most successful it is, but the claim of originality must be

denied. Certainly neither the Presidency nor the Congress has better withstood the fluctuating winds of popular opinion than the Supreme Court. Despite intermittent popular movements against it the Court is more securely lodged in the confidence of the people than the other two branches of the Government. But the establishment of the Court was not a fruit of the creative intelligence of the Federal Constitutional Convention. It was a continuation of means for adjustment which the colonies first and then the thirteen sovereign states and finally the Confederation had evolved. The various controversies, most of them regarding boundaries between different colonies, had to be settled, and partly they were settled by the Privy Council. After independence these controversies did not cease. To them were later added difficulties between the states and the Confederation. At first the Continental Congress tried to adjust these conflicts, but eventually it became necessary to set up a technical judicial tribunal, the Court of Appeal. Not merely the recognition of the need for a body to compose the difference between the states *inter se* and between the states and a central government but the practical response to that need evolved by the predecessor of the United States dictated the necessity and furnished the materials for the Supreme Court which the Constitution outlined and the First Congress established. At least one litigation that began during the Confederation before its Court of Appeal had its final stage before the Supreme Court. In effect the Supreme Court constituted not the invention of a new institution but the perpetuation and perfection of an old one.

Indeed some mechanism for adjusting conflicts between the centre and the constituent units is indispensable to a federal form of government. Such adjustments might be left to the federal legislature, as in part and ineffectively they were under the Confederation. But where the powers in a federal government between the centre and the circumference are distributed by a legal document, certainly in any political society where the ideas of public law derive from the common law, it is natural that conflict regarding this distribution of

power should become legal issues to be resolved by a judicial and not a political tribunal. Canada and Australia represent two different forms of federalism. In each the distribution of governmental authority as between centre and circumference is different. In each a court with functions similar to our own Supreme Court is part of the scheme, not in imitation of the American Supreme Court but as an inevitable mechanism of a federal state. To be sure the scope of authority of this adjusting mechanism may vary and is itself defined either explicitly or by the implications imported into constitutions in the document distributing powers in a federal government. That the Supreme Court should have been given all the powers it has is of course not a matter of natural law. But if any federal government is to endure, it must provide for some check rein on the constituent units, and the history of the American colonies and states made it inevitable that that check rein should be a court and not Congress. "I do not think", wrote Justice Holmes, "the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperilled if we could not make that declaration as to the laws of the several States. For one in my place sees how often a local policy prevails with those who are not trained to national views and how often action is taken that embodies what the Commerce Clause was meant to end."

But judicial adjustments in the English-speaking world operate within traditional limitations. By confining the power of the Supreme Court to the disposition of "cases" and "controversies", the Constitution in effect imposed on a tribunal having ultimate power over legislative and executive acts the historic restrictions governing adjudications in common law courts. Most of the problems of modern society, whether of industry, agriculture or finance, of racial interactions or the eternal conflict between liberty and authority, become in the United States sooner or later legal problems for ultimate solution by the Supreme Court. They come before the Court, however, not directly as matters of politics or policy or in the form of principles and abstractions. The

Court can only deal with concrete litigation. Its judgment upon a constitutional issue can be invoked only when inextricably entangled with a living and ripe lawsuit. In lawyer's language the Court merely enforces a legal right. The rationale of the Supreme Court's function has been admirably expressed by one of the leaders of the American bar: "But august as are the functions of the court, surely they do not go one step beyond the administration of justice to individual litigants. . . . Shall we say that when an American stands before the court demanding rights given him by the supreme law of the land, the court shall be deaf to his appeal? Shall wrongs visited upon him by the illegal excesses of Congresses or legislatures be less open to redress than those which he may suffer from courts, or sheriffs, or military tyrants or civilian enemies? If this be so, if in any such case the ears of the court are to be closed against him, it is not the power of the court that has been reduced but the dearly-bought right of the citizen that is taken away."¹

How subtle and unfamiliar this traditional view of American constitutional law is to even the most eminent English lawyers appears from the comment made by an English Lord Chancellor, Lord Birkenhead, upon the distinction taken by Davis: "Your President is one for whom intellectually I have great admiration. His masterly address today carried me entirely with him. But surely one refinement was a little subtle. He said that the Supreme Court had not the right *in abstracto* to construe your fundamental constitutional document; but only in relation to the issues presented by an individual litigation. But is this in ultimate analysis a very serious derogation? When an issue challenged by an individual raises the question whether a law is constitutional or not, the decision of the Supreme Court decides this question for all time; and if the decision is against the legislature, the attempted law is stripped of its attempted authority."

In thus passing on issues only when presented in concrete cases the Supreme Court is true to the empiric process of

¹ John W. Davis in his address as president of the American Bar Association, 1924.

Anglo-American law. But the attitude of pragmatism which evolved the scope and methods of English judicature and subsequently its American versions was powerfully reinforced by considerations of statecraft in defining the sphere of authority for a tribunal of ultimate constitutional adjustments. For in the case of the Supreme Court of the United States questions of jurisdiction are inevitably questions of power as between the several states and the nation or between the Court and the Executive and Congress. Every decision of constitutionality is the assertion of some constitutional barrier. However much a judgment of the House of Lords may offend opinion, Parliament can promptly change the law so declared. But a decision of constitutionality by the Supreme Court either blocks some attempted exercise of power or releases the cumbersome procedure of changes of fundamental law. Therefore the Supreme Court, and very early, evolved canons of judicial self-restraint. Thus it would avoid decisions on constitutionality not merely by observing common law conventions. The Court very early in its history refused to give merely advisory opinions.¹ Partly this was an assertion of its independence, a refusal of the role of subordination either to Legislature or Executive. The Court withholds utterance unless a controversy is so moulded as to give the Court the last word. Partly also this is a manifestation of the psychology underlying the development of English law, which has special pertinence to the unfolding of American constitutional law. To refuse to give advisory opinions, to refuse to speak at large or indeed until litigation compels, is to rely more on the impact of reality than on abstract unfolding. In the workings of a constitution designed for a dynamic society this means a preference for a "judgment from experience as against a judgment from speculation".² To pass on legislation *in abstracto* or still worse in advance of enactment would too often be an exercise in sterile dialectic and as a practical matter would close the door to new experience. But the Court

¹ Hayburn's case, 2 U.S. 409 (1792); *Muskrat v. United States*, 219 U.S. 346 (1910).

² *Tanner v. Little*, 240 U.S. 369 (1915).

has improved upon the common law tradition and evolved rules of judicial administration especially designed to postpone constitutional adjudications and therefore constitutional conflicts until they are judicially unavoidable. The Court will avoid decision on grounds of constitutionality if a case may go off on some other ground, as, for instance, statutory construction. So far has this doctrine been carried that at times the Court will give an interpretation to a statute much more restrictive than its text or the intention of Congress apparently indicated. Again, in order to avoid the projection of a conflict between state and national authority the Court, in reviewing state court decisions, is alert to find that the state court merely enforced some state law which the Supreme Court is bound to respect and thereby to deny the existence of a federal controversy.

The court has thus evolved elaborate and often technical doctrines for postponing if not avoiding constitutional adjudication. In one famous controversy, involving a conflict between Congress and the President, the Supreme Court was able until comparatively recently to avoid decision of a question that arose in the First Congress. Such a system inevitably introduces accidental factors in decision making. So much depends on how a question is raised and when it is raised. For the composition of the Court decisively affects its decisions in the application of constitutional provisions and doctrines which by their vagueness not only permit but invite conflicting constitutional views on the part of the justices. But time is the decisive element in phases of government, as in war. The cost of uncertainty in result due to changes in the personnel of the Court, through postponing constitutional adjudication until such a decision is unavoidable, is more easily absorbed than would be the mischief of premature judicial intervention in the multitudinous political conflicts arising in a vast federal society like the United States. Political harmony would not be furthered and the Court's prestige within its proper sphere would be inevitably impaired. And so it is as important for the Court not to decide when a constitutional issue is not appropriately and unavoidably

before it as it is to decide when its duty leaves no choice.

Some claims of unconstitutionality, however much they may be wrapped in the form of a conventional litigation, the Court will never adjudicate. Such issues are deemed beyond the province of a Court and are compendiously characterized as political questions. Thus although according to the Constitution "The United States shall guarantee to every state in this union a republican form of government", the Supreme Court cannot be called upon to decide whether a particular state government is "republican". This and like questions are not suited for settlement by the training and technique and the body of judicial experience which guide a court. What such questions are and what they are not do not lend themselves to enumeration. In these, as in other matters, the wisdom of the Court defines its boundaries.

To be sure judicial doctrine is one thing, practice another. The pressure of so-called great cases is sometimes too much for judicial self-restraint, and the Supreme Court from time to time in its history has forgotten its own doctrines when they should have been most remembered. On the whole the Court has had to weather few popular storms. Even these few could have been avoided by a more careful regard for its own canons of judicial administration. The avoidable political conflicts which the Supreme Court has aroused by transgressing its own technical doctrines of jurisdiction demonstrate the large considerations of policy in which those doctrines are founded.

In the same soil of policy is rooted the canon of constitutional construction to which the Supreme Court throughout its history has avowed scrupulous adherence. The Court will avoid if possible passing on constitutionality; but if the issues cannot be burked, if it must face its responsibility as the arbiter between contending political forces, it will indulge every presumption of validity on behalf of challenged powers. This is not merely the wisdom of caution but the insight of statesmanship. For the cases involving conflicts between the states and the nation or between Congress and the Executive that touch the sensitive public nerves usually turn on such ambiguous language or such vague restrictions of the Con-

stitution as to afford a spacious area of choice on the part of the primary political agencies of government. And the Supreme Court, being a court even in these matters affecting closely the nation's political life, has enunciated again and again the doctrine that the Court cannot enforce its notions of expediency or wisdom but may interpose its veto only when there is no reasonable doubt about constitutional transgressions. Here, too, the Supreme Court has sinned against its own rules. Especially in construing such vague generalities as "due process" and "equal protection of the laws" it has overlooked their significance and failed to observe that they express "moods and not commands". Cases like *Lochner v. New York*¹ and *Adkins v. Children's Hospital*² illustrate what Chief Justice Hughes has characterized as "self-inflicted wounds", because the deep resentment they aroused was due essentially to the Court's departure from its own postulates.

A rhythm, even though not reducible to law, is manifest in the history of Supreme Court adjudication. Manifold and largely undiscerned factors determine general tendencies of the Court, much too simplified by phrases like "the centralization" of Marshall or "the states' rights" of Taney. Thus there are periods when the Court seems to forget its doctrine against declarations of unconstitutionality so long as there is room for reasonable doubt. Thus the liberality of the Waite period was followed by the dominance of the strict views of Justice Field, in turn yielding to the reaction which made the Holmes outlook prevail. After the first world war, during the decade when William H. Taft was Chief Justice, the Court again veered toward a narrow conception of the Constitution, although Taft himself, especially in a classic dissent, admonished against this tendency. Between 1920 and 1930 the Supreme Court invalidated more state legislation than during the fifty years preceding. Merely as a matter of statistics this is an impressive mortality rate, and it is no answer to point to the far larger number of laws which went through the Court unscathed. All laws are not of the same importance, and a single decision may decide the fate of a great body of

¹ 198 U.S. 45 (1904).

² 261 U.S. 525 (1922).

legislation. Moreover the discouragement of legislative effort through an adverse decision and a general weakening of the sense of legislative responsibility are influences not measurable by statistics.

Other factors than personnel explain much of the Court's history. Thus on a long view what the Court does and how depends much on the amount and the nature of its litigation. And these largely turn on the sources of its business. Few suits begin in the Supreme Court. Only the United States or a state or a diplomat can become an original suitor. All other litigants reach the Supreme Court by way of appeal from some other court. While boundary controversies or other contests between states (as, for instance, the litigation arising out of Chicago's attempted use of the waters of the Great Lakes) involve sharp conflicts and invoke one of the most important functions of the Supreme Court, they are relatively few in number. The chief work of the Supreme Court is furnished by appellate business, and that business comes from the highest courts of the forty-eight states as well as from inferior federal courts. The last fact is of profound importance in the history of the court. Unlike its analogues in Canada and Australia, the Supreme Court is the head of a hierarchy of federal courts. Waiving negligible exceptions, the Supreme Court of Canada and the High Court of Australia have before them only constitutional and federal questions coming for review respectively from decisions of the provincial and state courts. Similarly in cases coming to the Supreme Court from the state courts only questions involving the federal Constitution or controlling federal legislation arise. But through the federal courts there reaches the Supreme Court a stream of litigation having nothing to do with the federal Constitution and federal legislation but involving the myriad problems that arise under the common law and under state law and state constitutions.

The Constitution empowered the establishment of inferior federal courts not merely for the enforcement of federal law but also to provide tribunals of impartiality to which non-resident suitors may resort. Congress acted upon this

authority, established a nation-wide system of federal courts and not only entrusted them with the enforcement of federal laws but also conferred upon them the so-called diversity jurisdiction; that is, cases between citizens of different states. Thus instead of setting the Supreme Court apart as a court for adjustments of legal conflicts within the federal system the first Judiciary Act and its successors also gave the Supreme Court a vast budget of common law business. Indeed down to 1875 the Supreme Court was concerned much more with common law than with issues of federal public law. In that year the power of the lower courts over federal matters was widened and consequently a stronger federal content was given to the cases coming before the Supreme Court. This enlargement of jurisdiction of the lower courts and the increase generally of litigation because of the country's expansion in size, population and enterprise produced an amount of business which was beyond the physical powers of the court. It took from three to four years for a case to reach argument after an appeal was perfected. Such delays plainly were denials of justice.

Nor could the Court give itself up completely to grappling with its appellate docket. The federal judicial system as originally established was patterned on the English judicature in including the system of circuit riding. Circuit courts were established, but no circuit judges were created. The members of the Supreme Court were also made circuit justices with *nisi prius* duties in their respective circuits. In plain English, they had to sit as judges in the lower courts and later as a collective body hear appeals from their judgments on circuit. As the court's appellate work steadily mounted, the justices had either to neglect their circuit work, especially in view of the difficulties of travel in early days, or their Supreme Court work. In fact the administration of justice suffered both in the Supreme Court and on the circuits. Only partly was the pressure eased by the creation in 1869 of circuit judges in collaboration with circuit justices for circuit work. The obvious remedy was to relieve the judges of the duty of circuit riding. This was urged as early as 1790 by Edmund Randolph,

Washington's Attorney-General, in reporting to the House of Representatives on the workings of the new federal judicial system. But circuit riding was an obstinate institution. Tradition and provincial attachments no less than the desire to promote national sentiment through the peregrinations of the Supreme Court justices maintained the circuit riding system until 1891. Since then it has fallen into desuetude.

Indeed all efforts to enable the Supreme Court adequately to discharge its essential function foundered on the circuit court system. Instead of the obvious remedy, various mechanical devices for keeping abreast of the Supreme Court docket were urged. With a too frequent misconception as to the nature of the judicial business and the conditions for its wise disposition, it was assumed that more business calls for more judges. The first Judiciary Act provided for a Supreme Court of six members, which was increased to seven in 1807 and to nine in 1837. Subject to short fluctuations from a tribunal of ten to one of seven between the years 1863 to 1869, this has remained the size of the court.

Variants of the proposal to increase the membership of the Court for dealing with the increase of business have been recurrently urged. Thus a larger membership of the Court has been proposed, ranging from fifteen to twenty-four so as to permit shifts in the sittings of the Court or work by standing divisions. England and France were cited as examples of such schemes of judicial organization, and their experience has been drawn upon by some of the states of the United States. But either of these devices would be fatal for the special functions of the Supreme Court. A contemporaneous shifting personnel would disastrously accentuate the personal factor in constitutional adjudications, and divisional courts within the Supreme Court would require a mechanism for adjusting conflicts among the divisions. Not till 1891 did Congress pass the requisite legislation. Instead of increasing the size of the Court, it decreased its business.

This was accomplished by establishing intermediate courts of appeal for each of the nine circuits (in 1929 increased to ten). These were given final authority over a large field of

appeals which theretofore had gone to the Supreme Court, leaving the latter Court discretionary power to resolve conflicts among the intermediate courts or, when an important national interest otherwise required finality of determination, by the Supreme Court itself. By thus giving to the Supreme Court obligatory appellate jurisdiction over a restricted type of litigation and for the rest letting the Supreme Court decide whether to review, the Congress enabled the Court to keep abreast of its docket. It did more. It introduced a principle of procedure capable of progressive application, which saved the Court for the discharge of duties peculiarly its own in maintaining the constitutional system. When after the Spanish-American War and the first world war the vast expansion in economic enterprise and the resulting governmental regulation of business again produced a volume of judicial business beyond the Court's powers, Congress in 1925 came to the Court's rescue at its own request, by still further withdrawing the types of cases which can be taken to the Supreme Court as a matter of right and extending the area of litigation in which an appeal can be had in the Supreme Court only by its leave.

The Supreme Court has thus ceased to be a common law court. The stuff of its business is what on the Continent is formally known as public law and not the ordinary legal questions involved in the multitudinous lawsuits of *Doe v. Roe* of other courts. The construction of important federal legislation and of the Constitution is now the staple business of the Supreme Court.

Constitutional interpretation is most frequently invoked by the broad and undefined clauses of the Constitution. Their scope of application is relatively unrestricted and the room for play of individual judgment as to policy correspondingly broad. A few simple terms like "liberty" and "property", phrases like "regulate Commerce . . . among the several States" and "without due process of law" are invoked in judgment upon the engulfing mass of economic, social and industrial facts. Phrases like "due process of law", as Judge Hough reminded us, are of "convenient vagueness". Their

content is derived from without, not revealed within the Constitution. The power of states to enact legislation restricting an owner's use of natural resources, providing a living wage for women workers, limiting the rents chargeable by landlords, fixing standard weights for bread, prescribing building zones, requiring the sterilization of mental defectives, fixing the price of milk and other commodities—these powers hinge on the Court's reading of the due process clause. The Stockyards Act, the Grain Futures Act, the West Virginia Natural Gas Act, the recepture clause of the Transportation Act, the First Child Labour Law, all involved interpretation of the commerce clause; but the fate of these laws depended on adequate information before the Court on the economic and industrial data which underlay this legislation, and judgment on these facts by the Court. Again, the Steel Trust case¹ the Shoe Machinery case,² the Duplex case,³ the Bedford Cut Stone case,⁴ all involved interpretation of the anti-trust acts. But the interpretation of this legislation was decided by the facts of industrial life as seen by the Court. The conflicting opinions of the justices in cases involving the activities of trade associations were not due to any differences in their reading of the Sherman law *in vacuo*. The differences were attributable to the economic data which they deemed relevant to judgment and the use which they made of them. What constitutes a "spur track", when public convenience justifies a railroad extension or abandonment, under what conditions one railroad must permit use of its facilities by a rival, how far the requirement of a state for the abolition of grade crossings depends on approval by the Inter-state Commerce Commission—these and like questions cannot be answered by the most alert reading of the Transportation Act. Their solution implies a wide knowledge of railroad economics, of railroad practices and the history of transportation, as well as a political

¹ United States v. United States Steel Corp., 251 U.S. 417 (1919).

² United States v. United Shoe Machinery Co., 247 U.S. 32 (1917).

³ Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1920).

⁴ Bedford (Cut Stone Co.) v. Journeyman Stone Cutters' Ass'n., 47 Sup. Ct. Rep. 522 (1926).

philosophy concerning the respective roles of national control and state authority.

These are tremendous and delicate problems. But the words of the Constitution on which their solution is based are so unrestricted by their intrinsic meaning or by their history or by tradition or by prior decisions that they leave the individual justice free, if indeed they do not compel him, to gather meaning not from reading the Constitution but from reading life. It is most revealing that members of the Court are frequently admonished by their associates not to read their economic and social views into the neutral language of the Constitution. But the process of constitutional interpretation compels the translation of policy into judgment, and the controlling conceptions of the justices are their "idealized political picture" of the existing social order. Only the conscious recognition of the nature of this exercise of the judicial process will protect policy from being narrowly construed as the reflex of discredited assumptions or the abstract formulation of unconscious bias.

Thus the most important manifestations of our political and economic life may ultimately come for judgment before the Supreme Court, and the influence of the Court permeates even beyond its technical jurisdiction. That a tribunal exercising such power and beyond the reach of popular control should from time to time arouse popular resentment is far less surprising than the infrequency of such hostility and the perdurance of the institution. No political party has been consistent in its support or its hostility to the Court. Every American political party at some time has sheltered itself behind the Supreme Court and at others has found in the Court's decisions obstructions to its purposes. This is a reflection of the fact that the Court throughout its history has not been the organ of any party or registered merely party differences. Clashes of views, and very serious ones, there have been on the Court almost from the beginning, but these judicial differences have cut deeper than any differences as to old party allegiances; they involve differences of fundamental outlook regarding the Constitution and judge's role in construing it.

Whenever Supreme Court decisions have especially offended some deep popular sentiment, movements have become rife to curb the Court's power. In Marshall's days such efforts were invoked by decisions promoting centralization and subordinating the states. In more recent times invalidation of social legislation, both state and national, has aroused popular disfavour. In the earlier period we find proposals for repealing the famous section 25 of the Judiciary Act of 1789, whereby the Supreme Court had power to review decisions of state courts denying some federal right. A brake upon a finding of unconstitutionality was also proposed by requiring the concurrence of seven justices and not a mere majority. The latter safeguard was revived by Senator La Follette in 1924, while in an earlier stage of the Progressive movement, in 1912, Theodore Roosevelt proposed a recall by popular referendum of decisions nullifying state but not Congressional legislation. But no proposal for curtailment of the Supreme Court's power over legislation has ever been adopted. The wise exercise of this power, it has shrewdly been discerned, cannot be assured by any mechanical device. The only reliance rests in the quality of the judges and the temper and training of the bar, for no graver responsibilities have ever confronted a judicial tribunal, no more searching equipment was ever required of judges. The spirit and culture and insight which should be the possessions of a justice of the Supreme Court have been stated by Judge Learned Hand: "I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will. Men do not gather figs from thistles, nor supple institutions from judges whose outlook is limited by

parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which make it an organism; which demand new schemata of adaptation; which will disrupt it, if rigidly confined."

All told, eighty-five judges have sat on the Supreme Court. A goodly number of them have been men of intellectual distinction. But hardly a half-dozen are towering figures: Marshall, the creative statesman; Story, a scholar of vast learning; Taney, who adapted the Constitution to the emerging forces of modern economic society; Holmes, the philosopher become king; Brandeis, the master of fact as the basis of social insight. Confidence in the competence of the Court has not been won by the presence of a rare man of genius. The explanation lies rather in the capacity of the Court to dispose adequately of the tasks committed to it. The effective conditions for insuring the quality of judicial output of the Supreme Court have in the long run been maintained. Human limitations have been respected. While in response to the country's phenomenal increase in population and wealth and the resulting extension of governmental activities duties have been placed upon Congress, the executive departments, various federal administrative agencies and the lower federal courts which disregarded their strength and capacity, the duties of the Supreme Court have on the whole been kept within the capacities of nine judges who are not supermen.

The Supreme Court's internal procedure moreover has been an important factor in the achievement of its high standards of judicial administration. In its disposition of cases, in the rules and practices which determine argument, deliberation and opinion writing, the Supreme Court operates under the following conditions, indispensable to a seasoned, collective judicial judgment: (1) Encouragement of oral argument; discouragement of oratory. The Socratic method is applied; questioning, in which the whole Court freely engage, clarifies the minds of the justices as to the issues and guides the course of argument through real difficulties.

(2) Consideration of every matter, be it an important case or merely a minor motion, by every justice before conference and action at fixed, frequent and long conferences of the Court. This assures responsible deliberation and decision by the whole Court. (3) Assignment by the Chief Justice of cases for opinion writing to the different justices after discussion and vote at conference. Flexible use is thus made of the talents and energies of the justices, and the writer of the opinion enters upon the task not only with knowledge of the conclusions of his associates but with the benefit of their suggestions made at conference. (4) Distribution of draft opinion in print, for consideration by the individual justices in advance of the conference, followed by their discussion at subsequent conferences. Ample time is thus furnished for care in formulation of the result, for recirculation of revised opinions if necessary and for writing dissents. This practice makes for team play and encourages individual inquiry instead of subservient unanimity. (5) Discouragement of rehearings. Thoroughness in the process of adjudication excludes the debilitating habit of some state courts of being too prodigal with rehearing. (6) To these specific procedural habits must be added the traditions of the Court, the public scrutiny which it enjoys, and the long tenure of the justices. The inspiration that comes from a great past is reinforced by sensitiveness to healthy criticism. Continuity and experience in adjudication are secured through length of service as distinguished from the method of selection of judges.

These factors probably play a larger part in the effective work of the Supreme Court than elevation of station, high responsibility and the greater ability of the justices, drawn as they are from the whole country, as compared with state court judges.

HOW UNITED STATES GOVERNMENT POLICY IS MADE

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THIS is an effort to tell the story behind the story. The constitutional processes by which Government policy is expressed in the United States through declarations of the President, his Cabinet officers and other high officials, enactments of the Congress, approval of treaties and confirmation of the appointment of public officials by the Senate are all well known to the informed reader. What may be not as well known, but is yet as important to the democratic process as it operates in the United States, are the well-springs from which come the policies that pour forth from established and constitutional government agencies. It is important that these well-springs be known and recognized, for American policy which often may appear to the foreign observer to be unaccountable is very well accounted for by its fundamental origins.

In order to give the discussion practical content I have set it as my task to analyze a number of the leading post-war Governmental policies and to trace their origins. These include some examples of the bi-partisan foreign policy which has manifested itself primarily in the European Recovery Programme, the Atlantic Pact, the Greek-Turkish Aid Programme, and the position of the United States in the United Nations, certain items of domestic policy, such as rationing and price controls, housing, and the relations between management and labour, and some of America's human problems such as how to deal with Communists and subversives, and the reception which America should provide for the displaced persons.

It will be manifest from an examination of these subjects

of Governmental policy that the well-springs from which such policy flows are as varied and as peopled as our land, for policy finds its origins equally in the State Department and in the Presidency, among the people themselves without almost any intervention of Government, among veterans', welfare and civic organizations, from the Congress itself, and interestingly enough from the United Nations. In one case, even, policy was made by a debate between two aspirants for the Republican nomination for the Presidency—but more of that later.

The essential well-spring of the European Recovery Programme was the Department of State, developing under the great leadership of Secretaries Byrnes and Hull and coming to fruition under General Marshall and Under-Secretary Acheson. Yet had not this policy enlisted the aid of Senator Vandenberg of Michigan, a great leader and an outstanding international figure who literally led the Republican Party (then in control of both Houses of Congress) to accept it, it could never have happened.

In a speech at Cleveland, Mississippi, on 8th May, 1947, the then Under-Secretary, now Secretary, of State, Dean Acheson, gave public expression to the Administration's concern with the economic deterioration in Europe. He explained the "facts of international life" which had conspired to produce an unprecedented dollar shortage abroad and added significantly that the situation could be met only by further emergency financing perhaps "of a type which existing institutions are not equipped to handle . . ."

Congress entered into the developing policy at this stage when informal consultations were held between the then Chairman of the Senate Foreign Relations Committee, Senator Arthur Vandenberg, and members of the Department of State. Such a procedure was not without precedent in the formulation of U.S. foreign policy although formal machinery for preliminary legislative-executive exploration is not provided. In this instance, the step was of the utmost importance in view of the political division of the Government between a Republican-controlled Congress and a

Democratic-controlled Administration. Senator Vandenberg was able to contribute significantly to the developing policy, not only from his extensive knowledge of foreign policy, but also from his ability to gauge the tenor of Congressional reaction to a proposal of the nature contemplated.

The official proffer of assistance which eventually became the European Recovery Programme was extended by the then Secretary of State, General George C. Marshall, in a speech at Harvard University on 5th June, 1947. Simple in context and expression, the Secretary's address incorporated a decision of policy of transcendent importance.

As it emerged at Harvard, the European Recovery Programme was still in broadest outline. The initiative in designing the working blueprint was left to Europe. The position of the United States, however, was made clear. It would consider association with an integrated programme of assistance "agreed to by a number, if not all, European nations", for a period of three or four years. The role of the United States was described as one of friendly assistance and of extension of support for Europe's programme "so far as it may be practical . . . to do so."

While the 16-nation Organization of European Economic Co-operation was meeting in Paris to prepare a programme, provision was being made in America to receive the joint report on Europe's needs and to reconcile it with America's capacities. On 22nd June, 1947, the President established three committees in the executive department to consider various aspects of the programme. In addition a special Select Committee on Foreign Aid (the "Eaton-Herter Committee"), composed of members of many of the standing Committees of the House of Representatives, was established to study the conditions of the participating European nations.

While these preparations were in progress, the process of informing the American people of the purposes and content of the programme went on apace. In the days immediately following the Harvard Address, the President and his departmental assistants at the highest levels transmitted the concept of the programme in speeches to prominent

leaders in such fields as business, culture, labour, agriculture and politics. As the details of the project became better known through the mass media of the press, radio and television, members of Congress, private groups and individual citizens participated to an ever-increasing degree in the public consideration of the programme.

By the time the special session of Congress was convened on 17th November, 1947, to consider foreign assistance, E.R.P. was one of the most thoroughly discussed and least opposed measures of policy ever to reach the legislative stage. In the subsequent hearings before the appropriate committees of both Houses, the mass of accumulated information was weighed, evaluated and finally shaped into legal form. Days of floor debate followed in both Houses led in the Senate by Senator Vandenberg and in the House by Representatives Eaton, Herter, Vorys, Fulton, Lodge, Bloom, Kee, Richards, Douglas and others, including the writer. Ten months after the Harvard Address, on 3rd April, 1947, the E.R.P. became law.

The final form of the legislation modified in many details the programme originally developed by the President in co-operation with the O.E.E.C. nations. The purpose of the E.R.P., however, remained as it was at the time of the Harvard Address—"the revival of a working economy in the world so as to permit the emergence of political and social conditions in which free institutions can exist."

It is interesting to compare this development of the European Recovery Programme with the development of sentiment in the United States for the taking over of the responsibilities of the British Government in respect to Greece. This was a Presidential policy which broke upon the country with lightning effect when on 12th March, 1947, the President enunciated to a Joint Session of the Congress his famous "Truman Doctrine" of containment of the expanding U.S.S.R., and as a specific application asked for legislation to extend the required economic and military aid to Greece which had been evacuated by the British forces according to notice given to the American Government on

24th February, 1947. It was after, rather than before, announcement of this doctrine that public and Congressional support for the aid had to be obtained.

Readers in Great Britain will be interested in a sidelight on the formulation of United States policy with respect to Israel, and why it was but a few moments after the independence of Israel had been proclaimed on 14th May, 1948, that the United States was the first to recognize the new state. This was attributable to a complexity of factors—traditional, political, humanitarian, economic and strategic—all of which had developed through three decades. All the Presidents of the United States from the time of Woodrow Wilson gave official endorsement to the Jewish aspirations for the creation of a national home for the Jewish people in the Holy Land. The sentiment was reflected in the platforms of the major political parties and numerous resolutions of the Congress and the state legislatures. Its basis was deeply grounded in the sympathy of the American people with the Jewish desire for a homeland, accelerated by the desperate plight of European Jewry resulting from the racial extermination policy practised by the Nazis.

We may with profit now turn to a situation in which the people themselves were the origin of policy and effectively caused it to be carried through. There seems to be substantial agreement that inflationary price rises in the United States were avoided by rationing and price control in World War II far more successfully than in World War I or any previous comparable period during the nation's history. When the war was over the national Administration's policy-makers indicated a desire to retain restrictions and shape reconversion policies.

In general the Administration had the backing of the organized labour groups which, though they wanted wage increases, were afraid that inflationary price increases would wipe out the advances in real wages gained by a large portion of labour during the war. On the other hand, differing from the Administration and labour group, the producers and distributors saw a danger to their position in continued

controls on industry. Their arguments were based on the theory that the Office of Price Administration could restrain price advances only at the expense of rapid reconversion and expansion, that the rapid expansion of production itself would serve as a safeguard against the possibilities of inflation after the removal of controls, and that the greater production which would result after the removal of controls would prevent scarcities.

The opinion of the great unorganized mass of American consumers in regards to the role of the controls in the reconversion period is difficult to determine. But one thing seems clear: they did desire goods and services which were denied during the war. The "do without" patriotic attitude of the American people which motivated them to endure the shortages of consumers goods during the war had changed. People had money and they wanted goods. But goods did not seem to be becoming available in satisfactory quantities. Rightly or wrongly people began to suspect that Government price ceilings and regulations were to blame for the shortages of consumer goods. The producers complained that controls acted in such a way as to make it difficult for manufacturers to produce their products at a profit. In short, the consumers were willing to pay the price necessary to achieve the satisfaction of their wants. The normally law-abiding citizen began to deal in the black market. Thus, regardless of controls, prices went up. People either paid an inflated price or they did not get what they wanted. The public was giving only half hearted support to a law which apparently it no longer wanted. The popular attitude prevailing towards controls lends support to the theory that, in a democracy, any law will work so long as the people themselves believe in it, but once their belief is gone no amount of legislation can save it. All during the autumn and winter of 1945-46 and into the spring of 1946 the campaign to lift controls continued; the pressure placed upon Congress was heavy and constant. On 25th July, 1946, Congress after having failed to do so in June, turned out a Price Control Extension Act which met with the approval of the President. This law

reinstated most of the price controls, but did call for a greatly accelerated rate of decontrol.

However, the law of supply and demand could not be dealt with so readily. Producers—faced with the prospect of what they considered to be inadequate profits—refused to send their goods to market. Available supplies of consumer commodities, particularly of meat, were lower than ever. It would seem that Congress was vindicated in its original stand on price control. The drastic reaction against the administration of price controls became increasingly evident in the fall of 1946. Butchers began to close down their shops in protest over the shortage of meat; and housewives made known their resentment over their inability to secure adequate supplies of meat. The extent of this widespread public discontent over the shortage of meat was made clearly evident to Congressmen when they began to campaign for re-election in the fall of 1946; they quickly became acutely conscious of the fact that the people were seriously aroused. Congressmen of the majority party made known the seriousness of the existing situation to the President. Their pleas resulted in the lifting of controls on meat, livestock, food, and food products from meat. But it was too late and in the Congressional elections of 8th November, 1946, many voters—believing the party in power was to blame for the scarcities of consumer goods—showed their resentment. Undoubtedly their discontent was an important factor in the election of a Republican majority to Congress in 1946.

President Truman was quick to recognize the implied verdict regarding price decontrol in the election returns. On 9th November, 1946, scarcely fifteen months after V-J Day, he removed all price controls except those on sugar, rice and rent, bringing into effective government policy the results of months of agitation in favour of price decontrol . . . the latter furnishing evidence of the highly complicated yet eventually effective manner by which public opinion finally becomes Government policy in the United States.

The effectiveness of veterans', social, civic and welfare organizations as the well-spring of Government policy is

well shown through the fruition of their work after six years of labour in the enactment of the U.S. Housing Bill of 1949. This bill provided for 800,000 publicly-assisted low-rent housing units over six years, and made other provisions for slum clearance, rural farm and non-farm housing, housing research, and improvement of financing opportunities for new private housing. It will bring our nation much nearer than it has ever been to the needed goal of 1,500,000 new homes a year to fill up the gap of 15,000,000 homes in ten years.

The drive for housing was finally supported by the leading national organizations of veterans of World Wars I and II, including the Veterans of Foreign Wars and the biggest of them (the American Legion), the two great labour organizations (the American Federation of Labour and the Congress of Industrial Organizations), church groups, social groups, social organizations of religious faiths including the largest of the Catholic, Protestant and Jewish organizations, the largest organizations working in the interest of Negroes, social workers, women's organizations and even the United States Conference of Mayors. The mass power of these organizations was perhaps best demonstrated by the first national veterans' housing conference held in 1948 which represented millions of ex-servicemen in the United States and which met in Washington to impress the members of Congress with the demand of ex-servicemen for housing.

This great organized activity on the part of organizations, co-ordinated by a number of organizations specializing only in co-ordination like the National Housing Conference of Washington, D.C. and the Citizens Housing Council of New York City, brought about that bi-partisan support without which the opposition of ultra-conservative members of Congress, who considered publicly-assisted low-rent housing a creation of collectivism, could not have been overcome.

In the 78th Congress of the United States, which was held in 1943, there was established a special committee to consider post-war economic problems, including housing. To indicate the bi-partisan nature of the fight for housing, although the Democratic party was in power at that time,

Senator Robert A. Taft, prominent Republican, was named chairman of the sub-committee on housing.

In 1944, this Committee examined every phase of the housing problem in the country. It was in close touch with all agencies and organizations that dealt with housing from the financial, construction, management or tenant viewpoint. In 1944 there began extensive hearings on every aspect of housing. Senator Taft's committee had evidence from every kind of informed housing group. In August of 1945 this committee published its report stating the comprehensive post-war housing programme that the evidence indicated would be needed to meet the housing requirements of the American people for ten years.

The first bill to be introduced in the Senate of 1945 pursuant to the above investigation was sponsored by Senator Robert F. Wagner of the North-Eastern part of the United States, New York; Senator Allen J. Ellender in the extreme South, Louisiana; and Senator Robert A. Taft from the Mid-West, Ohio. This bill passed the Senate of the United States, but died in the corresponding committee in the United States House of Representatives at the end of that session.

In the next session of Congress, in 1947, another bi-partisan housing bill was introduced by Senators Taft, Ellender and Wagner. The Republican Party was now in control of Congress and therefore a Republican name, Senator's Taft's, occurs first, but the combination is still the same. This Bill passed the Senate once again on 22nd April, 1948, but failed of passage in the House of Representatives.

From the foregoing it will be seen that throughout its history, in Congress, housing has always been a bi-partisan issue. The Republican and Democratic members did not divide evenly for or against such legislation. Rather, there were those within both parties who favoured substantially the same kinds of housing legislation. It eventually required just such support to pass the necessary legislation in 1949.

In considering domestic policy where public opinion created Congressional support, it is also interesting to

consider the area in which Congress itself made policy because it considered itself to have a mandate from the people. A great part of the Republican majority elected to Congress in 1946 considered that their election was due in substantial part to a rebellion by the people against abuses of their power by leaders of trade unions, and almost at once sweeping changes in the National Labour Relations law were proposed. I felt that the reaction was one leading to excesses on the other side rather than on the side complained against, and opposed the making of changes in the heat of such an atmosphere—but I was in the minority. So overwhelming was the sentiment of the members of Congress that the Taft-Hartley Law placing severe and vexatious restrictions on trade unions and trade union members swept through the Congress by huge majorities in the early months of 1947. On 27th June, 1947, on receipt of President Truman's message vetoing the Taft-Hartley Law, the House of Representatives immediately re-passed the bill by a vote of 331 to 83 and the Senate shortly thereafter by a vote of 68 to 25, over two-thirds, making the bill law over the President's objections. This spirit regarding labour was so deeply ingrained that even though the Democratic candidate for President who won the elections of 1948 pledged repeal of the Taft-Hartley law, and a majority of Democrats was returned to Congress too, it has still been impossible to bring about repeal or broad scale amendment of the Taft-Hartley Law.

American public opinion was deeply shocked by General Eisenhower's disclosures of the bestiality of the Germans in their concentration camps and gas chambers. Hence there was great sympathy for the hard core of about 1,000,000 Poles, Balts, Yugoslavs, Russians and Jews left in Germany after the occupation who, for fear of political, religious, or racial persecution, were unable or unwilling to be repatriated to their countries of origin and thus became displaced persons.

The action of the General Assembly of the United Nations in February, 1946, in determining upon the organization of a special agency for the care and resettlement of the displaced persons which ultimately developed into the International

Refugee Organization captured the imagination of the American people. Thereafter began a steady pressure of American opinion which led the President to advocate emergency legislation for the admission of displaced persons as early as January, 1947. The famous Stratton Bill to admit 400,000 displaced persons into the United States over a four-year period, all without regard to race, religion or national origin, unleashed enormous popular support which was climaxed by the International Refugee Organization's request to the nations of the world in 1948 to accept each a fair share of the total number of displaced persons.

But it was not until the summer of 1947 when many members of Congress actually travelled in Europe and examined at first-hand the problem of displaced persons, and after a special committee of the Committee on Foreign Affairs of the House of Representatives under the chairmanship of the Hon. James G. Fulton of Pennsylvania, upon which together with the Hon. Frank L. Chelf of Kentucky I had the privilege of serving, investigated the subject and issued a detailed report that it was possible finally to get legislation.

The accumulated prejudices of those who did not understand that immigration had been the very lifeblood of America held down the first Displaced Persons Bill to permit the admission of a little more than 200,000—and that on a very unsatisfactory selection basis—over the course of two years, and it has not yet been possible to get a better bill through both Houses of Congress since the 1948 act was passed. Yet the public interest continues at high pitch—and there will be corrective legislation. The displaced persons we have received are splendid citizenship material, and prospects for liberalization of the existing law appear very good.

The proposal which would, in effect, outlaw the Communist Party, originated in the Congress and was developed in the Mundt-Nixon Bill offered in March of 1948. It would have outlawed the Communist Party through requiring registration of party members, and then denied them the right to travel abroad and hold Government jobs, among other matters. The issue was hotly debated in the Congress and

suddenly, in May, 1948, became the subject of controversy between Governor Thomas E. Dewey and Captain Harold Stassen, U.S.N.R. then campaigning in the State of Oregon as rivals for the Republican nomination for the Presidency. A full-scale debate was held between the two candidates in Portland, Oregon, on 17th May, 1948, listened to by millions in the United States. It seemed to most listeners that on the radio Governor Dewey had prevailed, holding that outlawing of the Communist Party would be a violation of the Bill of Rights and the Constitution, would drive it underground and make it even more dangerous, while Captain Stassen argued that it was a method of stopping Communist infiltration in the United States and was a step toward peace.

After this debate interest in the legislation markedly fell off and though it passed the House of Representatives it was not considered in the Senate and hence did not become law. It is indeed a remarkable tribute to the development of the United States policy that some of our most conservative legislators condemned this effort. A typical judgment of a member of this group, follows: "However much we despise Communism, we love more our constitutional processes of congressional government, and we will not forsake them even to meet the Communist threat."

It will be seen from this brief sketch that the origins of our Governmental policy, though varied, are deep, that they rise from the very stuff from which America is made and that a patient confidence in the ultimate soundness of the policy so developed is warranted. These are not ways to decide policy quickly but they are ways to decide with depth of conviction. Once decided, the implementation of policy is in total effect more reliable and on a greater scale than anything the world has ever known. The uncertainties and the difficulties are in the coming to a decision—that is a point the peoples of the world should bear in mind. A patient confidence in the essential decency, integrity and good sense of the American people will inevitably be well rewarded.

THE WAYWARD CHILD: CONGRESS

by D. W. BROGAN

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THE most important, the oldest, the most interesting of the numerous progeny of the Mother of Parliaments is undoubtedly the Congress of the United States. It has been a going concern since 1789; it has survived the States General of France and the Reichstag of the Second Reich. It is undoubtedly a child of Parliament; it is, itself, a great parliament. Yet it is a child differing a great deal from its mother. There are offices whose name recalls Westminster like the Speaker; but the Speaker in Washington is not quite the same officer as the Speaker in Westminster or Ottawa.¹ There is the mace, symbol of the power of the House of Representatives, but the material mace is the Roman fasces. There is the Senate, in so many ways copied from the eighteenth century House of Lords, but yet so different, if only in that its power has not waned. And because Congress is like and unlike, is a legitimate child but a "bould, unbiddable" child, the spectator brought up on the English parliamentary system finds it hard to be just or even to observe what Congress is and how it works.

There are historical reasons for the similarities; they need not be stated. There are historical reasons for the differences, the influence of colonial practice where the royal Governor both reigned and ruled, and the influence of the American Revolution whose leaders read Montesquieu and determined to prevent in America any imitation of the political methods of King George III.

Then there is another basic reason or reasons for the difference. The United States is a geographically vast federation, not a small, unified country. The integration of the United States is going on, "the more perfect union"

¹ See pp. 86-7.

aimed at in the preamble to the Constitution is progressively being attained, but the United States remains a federation, remains a continent rather than a country and, though undoubtedly a nation, is a nation of a type unknown to Western Europe. This is reflected not only in the legal limitations on the powers of the federal government and, consequently, on the powers and duties of Congress, but in the party system that is better thought of as a series of sectional alliances than as a doctrinally symmetrical party system of the type taken as normal in English political writing. We must, therefore, approach the problems of American Congressional government not with the assumption that it is based on English practice and is abnormal and wrong when it diverges from that practice, but with the realization that great as has been the influence of English models on Congressional practice, the size of the country, the character of the Constitution, and the traditions and prejudices created by one hundred and sixty years of successful working have made a system with its own internal logic, its own special strength, and its own special weaknesses.

The main cause of variation from the model is undoubtedly not the federal character of the government (Canada and Australia show that) but the exclusion of the Executive from the Legislature. This has proved much more important than the Founding Fathers realized. A *complete* Congressional career may be had with no executive experience at all. Some famous figures in American political history, Stephen Douglas, Speaker Reed, Senator Borah, never had direct administrative experience and the trend is away from nominating serving members of either House for the Presidency.¹

Then Congress cannot get and would not accept the direct control of its business and time table that the Cabinet system makes second nature to the most determined "House of Commons man". The most that happens in the House of Commons is some degree of successful kicking against the pricks of front bench control. In Congress there is no front bench to kick against; Congress must provide its own dis-

¹ See p. 90.

cipline and organize its own business. True, when both Houses and the President are of the same party and there is harmony between the leaders on Capitol Hill and the White House, Congressional business may be controlled in the interest of the Administration, but not only may one or both Houses be of a different party from the President (as in 1947-9), but when all three units are formally united by party loyalty, discipline may be bad and the time table and legislative programme be ignored or profoundly altered. For the Congressional leaders are not the agents of the President, still less of his Cabinet; they are independent agents with whom the President has to negotiate.¹

It follows that there is some justification in the claim that American government is more truly "parliamentary" than ours. For Congress is certainly a more independent legislative body than the House of Commons. There are far more examples of what in Britain would be called "private member's bills" being enacted and often on more important subjects than the private member's bills that occasionally get on to the statute book in Britain. Even the so-called "must" bills, sent down from the White House when a President has a strong party majority in each House, are nearly always enacted with amendments and are not infrequently not enacted at all.

Congress, except in times of great crisis, assumes that its duty is to examine all proposed legislation critically and not to assume that its duty is done when it enacts what the White House assures it is the fulfilment of the popular mandate. Since it will not accept automatic leadership from outside, it must provide it for itself. This it does by the use of offices like the Speakership, by the creation of offices like the "majority leader", and by the use of a very elaborate committee system.

Nothing is, at first sight, more out of tradition than the use of the office of Speaker as one of the chief instruments of party policy in the House of Representatives. For the American

¹ A very powerful President may decide which of two candidates is to be the leader in either House, as Roosevelt did in 1937 when he secured the election of Mr. Barkley (now Vice-President) over Senator Harrison as leader of the Senate, but even Roosevelt was not omnipotent and few Presidents are Roosevelts.

Speaker has both to see that the business of the House (in the procedural sense) is carried on and to see that the business of the Administration (if of his party) is carried on or (if of the other party) held up. The modern Speaker is not the autocrat that Reed and Cannon were, but he is still very far from being a neutral presiding officer. If his party loses control of Congress he ceases to be Speaker.¹ And he is elected to forward the interests of his party. To protest against this state of affairs would seem to the American politician as naive as was the tenderfoot who pointed out that the dealer at the poker game was cheating. "Well, it's his deal isn't it?" Speaker Lenthall, not Speaker Lowther, is the prototype of the Speaker of the House of Representatives.

Of equal importance is the committee system. This is, in a sense, forced on both Houses. In the absence of a cabinet system inserted into the parliamentary system, either control of business must be given to one man (as it roughly was in the days of "Czars" like Speakers Reed and Cannon) or put under the control of committees. In both Houses business is controlled by committees which allocate time and which decide what bills shall be considered. All members are private members with equal rights; each member can and usually does introduce bills if only to impress his voters. The choice of bills to be dealt with is the business of the committees. No bill, except under exceptional circumstances, has any chance of success if it is not "reported out" *favourably* by the committee concerned. And the chances of success are greatly affected by the operation of a Congressional custom, "the seniority rule", which provides that the chairmanship in all committees goes to the member of the majority party with the longest *continuous* service on that committee. Given the working of the "locality rule"² and the geographical allocation of party strength this means that seniority and power go to the older members from the states and districts which never change their party allegiance. Elections are won by securing the support of the

¹ As Mr. Rayburn did in the 80th Congress, to return to his old office in the 81st.

² See pp. 90-2.

doubtful states; they are represented by the return to Congress of new members who have successfully appealed to the floating voters—and power is largely in the hands of old men who have no need to appeal to floating voters since their states or districts are securely attached by historical tradition to one party. The results are often paradoxical. At the moment, for instance, the Democratic leader in the Senate has been forced to appeal to the *Republican* leaders to secure the “discharge” of a bill affecting the admission of displaced persons which has been held up in committee by its Democratic chairman, Senator McCarran of Nevada, a state whose two Senators representing 100,000 permanent residents, can cancel out the votes cast by the Senators representing the fourteen million residents of the State of New York.

Either House can, of course, force committees to “discharge” bills to be voted on by the whole House, but repeated use of this power would destroy the discipline of Congress and make effective legislation impossible. Committees are a necessary evil; are they more than that? They are; they do give a chance for a Representative or a Senator to acquire a command of one area of legislation which it would be difficult to acquire in the House of Commons, and they do make effective (for what it is worth) parliamentary autonomy in legislation.

Moreover, it is in testimony before Congressional committees that, alone, Cabinet officers can publicly appeal to Congress—and the voters—and it is in the committees and nowhere else that there is a rough equivalent of Question Time. But this cumbrous system of liaison between the executive departments and Congress is unnecessarily time wasting. For the same evidence has to be given before the relevant committees of each House and sometimes before more than one committee of each House. Too little use is made of joint committees of both Houses and of joint sessions of committees of each House.¹ Indeed, in one very important field, the

¹ An exception should be made for special committees and for sub-committees of special committees. These need not respect the seniority rule and joint action is easier and more usual.

delays imposed by the double committee system have increased. In not very remote times, the Foreign Affairs Committee of the House was a pale and unimportant copy of the Foreign Relations Committee of the Senate. Only the Senate could ratify treaties or sanction executive appointments. But few fields of foreign policy now need no money to fertilize them and the House alone can initiate money bills, so its committee action is almost as important as the Senate's—and quite often not harmonious with it.

It is natural that, in these troubled times, the delays imposed by this system should be resented and their consequences feared. So there have been many suggestions of improvements. Thus (an old idea provided for in the constitution of the Confederate States) Cabinet officers could be given the right to speak and answer questions in either House, but not to vote. But this reform would not deal with the basic difficulty, for the Cabinet officers are nominees of the President and are in no sense independent political powers. The President can address Congress and the President alone can commit himself. Another suggested reform would create a kind of executive council in which the party leaders in each House would be associated with the President, sharing his responsibilities for the party programme. But could they share his powers? If they do not, what weight would this council have that cannot be provided by consultation outside the chambers of the Senate and the House? Either of these changes might be worth making, but neither comes near to meeting the fundamental difficulty, the separation of the Executive and the Legislature. The President alone represents the whole country; if his powers are to be shared, then the methods and still more the spirit of electing Congress will have to be changed. Some critics face this difficulty; they would give the President power to dissolve both Houses and enact that a President who lost such an election should resign. But this is not a reform of the Constitution, it is a new constitution with no present chance of enactment.

Congress has recently given formal recognition to some of the criticisms; the number of committees has been cut down,

they have been given more competent technical staffs, and they are now formally more competent to meet the highly briefed executive representatives on their own ground, but in the 81st Congress the old maxim that "crabbèd age and youth" cannot easily work together is being demonstrated. The youths are not necessarily young but the aged are very old and some of them very crabbèd.

A very important modification of the American parliamentary system is imposed by the working of the so-called "locality rule". This practice is partly based on the text of the Constitution and partly on "mere" but extremely effective custom. The Constitution provides that Senators and Congressmen shall be residents of the states that they represent; custom provides that Representatives shall be residents of their Congressional districts.

The effect of this rule is one force limiting the general prestige of Congress, in so far as it ensures that a large part of the political personnel shall not be drawn from the ranks of Congressmen and that consequently, service in Congress shall be only one way of making a success of a political career and, as far as the greatest office of all is concerned, not the usual method. Only one serving member of Congress has been elected President in this century.¹ Not a single member of the present Cabinet has been a member of Congress. If it were only for this result, the locality rule would be one of the chief causes of variation on the system of the Mother of Parliaments. Why should the locality rule have this result? Because it ensures the exclusion from Congress of many persons of great political talent who live in districts which, for one reason or another, would never elect them to Congress. It may be that there is more than one candidate for the one seat inside the same party. Obviously in New York, a great many persons of high political talent and, if one may judge by their successful entry upon other forms of political activity, a serious political ambition, are excluded from Congress because there are not enough New York seats to go around.

More easily demonstrable is the result of the permanent

¹ Warren Harding in 1920.

preponderance of one party in a district or state. Thus the one national elective office that F. D. Roosevelt could never have hoped to win was election to the House of Representatives from his rock-ribbed Republican district round Hyde Park. In New York City are concentrated a great many natural Republican leaders, but New York is always overwhelmingly Democratic. So the Congressional door is barred.

The Constitutional provision limiting representation in Congress to residents of the states to be represented can be justified if one clings to the high "States Rights" doctrines that had historical justification a century ago, but are more and more irrelevant to the highly integrated United States of to-day. And the Canadian example shows that a territorially equally vast and less united federation can get along without this rule. The career of Mr. Mackenzie King would have been hampered if the rule had existed, perhaps have been more than hampered, and it would have been far harder to find a seat for such newcomers to politics as Mr. King's successor, Mr. Saint-Laurent, and for Mr. Saint-Laurent's successor, Mr. Lester Pearson¹.

If the Constitution imposes state residence, what is to be said for district residence? Not much, unless we assume that the basic duty of a representative is to be a kind of consul for his district. True, the rule is sometimes evaded. Thus Mr. Franklin D. Roosevelt Jr. was a very recent resident of the 20th New York district when he was elected to succeed Mr. Sol Bloom, but the limits of evasion are narrow.² To sum up, the personnel of Congress is limited to those politically active members of the dominant party in states and districts and to two (for each state) and one (for each district). If Senators or Representatives are in secure hold of their seats, no Congressional career is possible for even the brightest young man.

¹ The British example is not as relevant as the Canadian, but the electoral history of Mr. Gladstone, Mr. Churchill and Mr. Balfour suggests what rigidities the American system might have imposed.

² It was suggested recently that Governor Dewey should nominate Mr. Hoover to serve out the term of Senator Wagner for although his nominal residence was in California, his real abiding place was New York City.

If no party is in safe control, would-be Senators or Congressmen know that if they are defeated later on, there is no alternative seat that they can be brought in for. So service in Congress may be either impossible or a gamble that no prudent man will make.

A necessary, but in some cases disintegrating institution, is the "direct primary" which is the normal method of choosing candidates in practically every state in the Union. The voters enrolled as Democrats or Republicans choose, in state-controlled elections, who shall be the official party candidates. In states where one party is dominant, this is the real election, in all states the official label is normally decisive.¹ The consequences for party unity in Congress are important. Most members of each House have shown, by winning the nomination, that they are independent political forces; they may have to some extent "ridden on the coat tails" of a popular and successful Presidential candidate or he may (as was the case in many states in November 1948) have come in with less votes in those states than the successful Congressional candidates got. In every Congress some and, in some Congresses most, members are in a position to defy White House pressure over a large field of proposed action.²

Then the division of powers between the two Houses greatly affects parliamentary methods. The Senate is the less representative but more powerful of the two bodies. The equality of representation of the states is a defiance though, probably even now, a necessary defiance of arithmetical democracy. Then only a third of the Senate is elected at the same time as the President and the whole of the House of Representatives. We must think of parliamentary power as divided between two rival and roughly equal bodies. One of these, the House, because of its size, needs rigid rules and rigorous committee control. The other, the Senate, is small

¹ In some states the primary is "open", voters do not have to claim party membership. In California, the primary is more than open since a candidate can be nominated by *both* parties.

² It should be noted that all of the House and a third of the Senate in "mid-term" elections have to get elected without the help of a strong or the handicap of a weak Presidential candidate.

and can afford the luxury of very loose rules, the more that it need not be in a hurry whereas the Representative, elected for only two years, is only too conscious of "Time's winged chariot hurrying near".

Again, the contrast with a practically omnipotent House of Commons whose five year term can only be shortened at the will of the governing committee, the Cabinet, is striking. The delays, the uncertainties, the vacillations, the division of powers between the Union and the States, between the President and the Congress, between the Senate and the House, and between all of them, jointly and severally, and the Constitution as interpreted by the Supreme Court need only be stated.

And it should be noted that each one of these divisions has more than historical justification, that the United States is not yet so united as to want a government as unified, as powerful, and as speedy in action, at any rate in normal times as there is in Britain. The American critic of Congress may think the delays and divisions are luxuries the United States can no longer afford, but he is more likely to lament the world changes that have made much constitutional practice obsolete, than to rejoice in the increased "efficiency" of his governmental machine.

What are the abiding merits of the American system? It does protect minorities in a way unknown to Britain; legislation requires much more than a mere majority to make it effective; and no election is a simple mandate to party leaders to carry out a programme. It does give members much more legislative training and power than the English system does to the private Member (though less chance of getting executive experience). It links every part of a sub-continent to the federal government by making sure that every serious group of interests and, in tens of thousands of cases, of individual voters, can get a hearing in Washington. It humanizes government, at great expense in money, time and friction. It mitigates the harshness of the maxim that this is a "government of laws and not of men" and so, for all its weaknesses and even for all its follies, the Congressional system is, in its own less dramatic and less revered way, as much part of the American political system as the Presidency or the Supreme Court.

REORGANIZATION EFFORTS IN CONGRESS

by HAROLD ZINK

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DURING the decade preceding 1945 there was a rising tide of criticism of the system under which the Congress of the United States operated. Far-reaching changes had been brought about in the office of the President and in the administrative departments; indeed in the case of the former such spectacular modifications had been made that it was commonplace to refer to the "new Presidency". Under Franklin D. Roosevelt a sizable force of "little Presidents", "brains trusters", consultants, research personnel, planners, budgetary and administrative management technicians, and secretaries had been recruited to assist the President in the discharge of his duties, which had become increasingly extensive and complicated. But the organization of Congress remained very much the same as it had been several decades earlier, when instead of voting the expenditure of many billions of dollars the annual budget ran to a mere \$1,000,000,000 and when the general task of law-making was a far simpler matter than during the great depression and the war years. It was alleged by many critics that Congress lagged far behind the President in competence to deal with public business, that the difficult relations characterizing the legislative and executive branches were to be explained in large measure by the inferiority complex which Congressmen had developed as a result of the more aggressive and alert Presidential staff, and that the long delay and frequently inadequate results of Congressional action were to some extent at least to be accounted for by the antiquated system under which Congress operated. To those who regarded the legislative branch as the bulwark of democracy, representing the people more intimately than any other branch and responsible for fundamental policy decisions, the deteriorating reputation of Congress was a source of much concern.

Nevertheless, despite the acute situation, the members of Congress for some years seemed to display little initiative in correcting the shortcomings. Perhaps the very inferiority complex which had resulted from the savage criticisms hurled at their branch in contrast to the praise often given to the executive branch created a state of paralysis; certainly it led to extreme sensitiveness. In the meantime various organized groups interested themselves in the problem. The National Planning Association drafted a long list of specific changes which it recommended as necessary to restore the effectiveness of Congress. The American Political Science Association, made up of university instructors interested in government together with various others concerned with public affairs, gave its attention to the matter by creating a special committee to study the entire situation and bring forth recommendations as to promising changes. In 1944, after rather extensive publicity had been given to the findings of the National Planning Association and the American Political Science Association's Committee on Congress, a Special Committee on Executive Agencies of the House of Representatives took cognizance of the need by recommending that Congress take action to "modernize" itself. Shortly thereafter a Joint Committee on the Organization of Congress was authorized by the Senate and the House of Representatives under the chairmanship of Senator Robert LaFollette, a well-known Senator from Wisconsin, and the vice-chairmanship of Representative A. S. Monroney from Oklahoma, both of whom had exhibited interest in the problem.

There was much speculation as to the significance of the setting up of the Joint Committee on the Organization of Congress, with divided opinion as to whether any practical result of consequence could be expected. The committee went about its assignment in a serious manner, selecting a competent research staff under the direction of Dr. George Galloway, and displaying genuine interest in the possible changes which might be made. Occasionally it proved difficult to find a time when the committee could meet, and there were various pressures which doubtless were felt to

some extent by the members. Much to the disappointment of many students of government, the committee did not feel that it was feasible for it to make recommendations regarding several of the thorniest problems, such as the system of selecting chairmen of standing committees on the basis of seniority, the filibuster technique in the Senate, and the almost autocratic role of the Committee on Rules in the House of Representatives. However, it is probably fair to state that most informed persons were distinctly impressed by the courage of the committee in tackling what everyone regarded as a task of great difficulty.

The scope of the recommendations made by the committee was broad and on the whole the proposals represented rather less in the way of compromise than many expected. A detailed consideration of the recommendations is hardly feasible, but it may be of interest to note the most important items. Perhaps the most sensational proposal as far as the general public was concerned involved a drastic reduction in the number of standing committees: in the Senate from thirty-three to sixteen (or possibly fourteen) and in the House of Representatives from forty-eight to eighteen. In order to meet the problem of poorly attended committee sessions alleged to be the result of assignment of a single member to several committees, it was recommended that each member be limited to one standing committee. Inasmuch as members complained that they were unable to give necessary attention to law-making because their constituents made such heavy demands on their time in doing favours and errands of one kind and another in Washington, it was proposed that each member of Congress be provided with an administrative aide to be paid a salary of \$8,000 to relieve him of non-legislative duties.

Since few of the committees had the facilities for carrying on anything like adequate research relating to the measures submitted to them, the Joint Committee recommended that each standing committee be provided with a staff of four research experts who would be exempt from discharge for political reasons. To provide additional technical services to

the committees, the Legislative Reference Service of the Library of Congress and the Office of Legislative Counsel (for bill-drafting) were to receive more adequate financial support. Committees, instead of delaying reports for long periods, were to be instructed to report all bills favoured by them promptly and with a statement giving a digest of the bill, reasons for action taken, the national interest involved, and the amount of money which would be required. Legislative riders on appropriation bills were to be prohibited; executive hearings on appropriation bills were to be abandoned; conference committees would be limited to differences in fact between the two Houses.

Among the other recommendations of the Joint Committee was one requiring pressure groups to register the names of their agents, the scope of their interests, and the amounts spent for various purposes, with the secretary of the Senate and/or the clerk of the House of Representatives. Federal courts were to receive authorization to settle claims made against the government, thus relieving Congress of the burden of many claims bills. The District of Columbia (the national capital) would be given self-rule and Congress would consequently no longer have to act as its council. At an early stage in each annual session the two Houses were to adopt a budget which would represent a balance of expenditures and revenues. The General Accounting Office was to carry on a considerably expanded survey of the government agencies so that Congress would be better informed as to what was actually going on. An Office of Congressional Personnel was proposed to provide a modern personnel system for all service employees of the Capitol. The *Congressional Record* was to be expanded in scope so as to furnish more information as to the entire process of law-making. Majority and minority policy committees were recommended to furnish more adequate leadership in Congress.

The report of the Joint Committee received wide publicity and in general evoked favourable comments from the press and from students of government. But it seemed to cause

consternation among certain members of Congress who either held or expected to hold committee chairmanships and who saw their added prestige and influence threatened as a result of the reduction in the number of standing committees. The opposition was successful in holding off a vote for a time and it was feared in many quarters that actual passage was doubtful. However, the expert handling of the bill by Senator LaFollette and Representative Monroney, together with the strong sentiment prevailing outside of Congressional halls, eventually led to the passage of the Reorganization Act of 1946 which embodied a major part though not all of the recommendations of the Joint Committee on the Organization of Congress. With the enactment accomplished by a Democratic Congress and a Republican Senate and House elected in November, 1946, there still seemed a possibility that the reorganization might fail to be implemented. But despite a certain amount of muttering by some of the newly elected members and their older colleagues, the provisions of the Act of 1946 were followed at least in form in organizing both Houses of Congress in 1947.

As passed the Reorganization Act reduced the number of standing committees in the Senate from thirty-three to fifteen and in the House of Representatives from forty-eight to eighteen. It authorized an administrative aide for each Congressman and provided research staffs for the standing committees. Committee assignments of members were limited, but not to the extent of the single assignment recommended by the Joint Committee. The financial requirements were in general accepted, but Congress balked at establishing a modern personnel system for Capitol employees. The proposals to give the District of Columbia self-government and to make federal courts responsible for disposal of claims against the government also were shelved for the time being. The great problems of seniority and filibustering were left untouched. Some regulation was provided for pressure groups. All in all, few were disposed to deny that significant progress had been made, though much remained to be done. A score of 50 per cent. might seem justified on the basis of

what was achieved in relation to the entire problem of modernizing Congressional organization.

An entire Congress has now operated under the Reorganization Act of 1946, and it therefore seems feasible to undertake at least a tentative though perhaps not a definitive evaluation of the results accomplished. The number of standing committees in both Houses has been sharply reduced, with the result that there is a more equal distribution of work. Under the old system committees such as Appropriations and Ways and Means in the House and Foreign Relations and Finance in the Senate were heavily burdened, while certain others had little or nothing to do. It would not be fair to say that all standing committees at present have the same amount of work, but there is certainly far more equality of load. Moreover, under the present set-up the standing committee systems in the two Houses are reasonably parallel, which, of course, has an advantage. While there has been some pressure to set up special committees to take over certain functions and thus nullify the reconstruction of the standing committee system as provided under the Act of 1946, this has been successfully resisted for the most part. More serious is the fact that sub-committees of the standing committees have been spectacularly increased in number, and there has been some disposition to accord to the sub-committees almost as much autonomy as the former standing committees enjoyed. No one can circulate among the members of Congress without hearing frequent and sharp criticism at this point, though it may be suspected that some of the complaint comes from those Congressmen who never looked with enthusiasm on the change and who remember that they might have held chairmanships of committees under the earlier arrangement.

Perhaps the most valuable achievement of the Act of 1946 has been the improvement in Congressional research facilities. The situation existing prior to 1946 was shocking in this respect. Some of the committees, it must be admitted, have abused the provisions made for expert research staff by employing journalist hacks and political hangers-on. The

events already reported in 1949 under the organization of the new Democratically-controlled Congress indicate that the provision relative to discharge of research staff members for political reasons is not being observed in every case. Nevertheless, it can hardly be denied that some of the committees have done an admirable job in recruiting research staffs; the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs may be mentioned among others as outstanding examples. The Legislative Reference Service of the Library of Congress has laboured very diligently to provide expert assistance to Congress and has achieved substantial results, though it has been denied adequate appropriations and received somewhat of a slap in the face when the House of Representatives voted to set up an Office of Co-ordinator of Information.

The regulations imposed on pressure groups are rather innocuous, and there is no evidence that pressure activities have been diminished by the Act of 1946. Nevertheless, the mere registration of agents and the reporting of expenditures serves a useful purpose. Some improvement is to be noted in the bad practice of attaching legislative riders to appropriation measures and in the character of the *Congressional Record*. On the other hand, the financial provisions of the Reorganization Act have been largely ignored. The appropriations for the General Accounting Office have never been such as to permit the performance of the work specified in keeping Congress constantly informed as to the efforts of the many administrative agencies. While Congress went through the motions of establishing a maximum sum to be appropriated during the years 1947-48, the two Houses failed to agree on the amount and the practical result was hardly perceptible. Despite the vigorous opposition of certain members who maintained that the financial provisions mentioned above should be considered among the most important parts of the Reorganization Act and that it could not be properly claimed that they had failed when they had never been put into effect, the majority leaders of the Senate and House in 1949 agreed upon a repeal of this section. Repre-

sentative Monroney, the co-sponsor of the Act of 1946, gave Congress a rating of 50 per cent. in carrying out the provisions of the Reorganization Act during the first year; a slightly higher rating might possibly be justified after two years of experience, but in general that evaluation probably holds true for the entire Eightieth Congress.

If the Act of 1946 may be said to have covered about 50 per cent. of the field and the actual carrying-out rate during 1947-49 has been 50 per cent., that means that a net achievement of approximately 25 per cent. has been made. Such figures are of course the merest estimates, but the fact remains that much remains to be done to bring the Congress of the United States to a point where it can handle its enormous responsibilities with maximum effectiveness. One additional problem has been dealt with during the first days of 1949: the autocratic power of the Committee of Rules of the House of Representatives. Since the "Revolution of 1910-11", when the Speaker's powers were drastically clipped, the Committee on Rules has played a large role in determining House business. Recently it has essayed a more autocratic role than previously and on a number of occasions has prevented standing committees from bringing their measures to a vote. In organizing the House at the beginning of 1949 the rules were modified so that hereafter if the Rules Committee refuses to give a bill right of way, the chairman of the standing committee which has original jurisdiction may move after twenty-one calendar days that the measure go to the floor for action. The House then determines by majority vote whether to pass or kill the bill as reported by the committee. The reaction on the part of the public and the President to the technique of filibustering in the Senate has become increasingly unfavourable. Key legislation which would undoubtedly have passed had it come to a vote has been held up by the action of a minority—sometimes a very small minority—in the Senate through talking the opposed measure to death (the filibuster). Having taken a definite stand on the Civil Rights Bill and realizing that the chances of passing this bill were not good as long as the

filibuster is permitted, the Democratic leaders stated it to be their intention during 1949 to face one of the most important problems of the Congress of the United States. It was hoped that it would be possible to adopt a closure rule under which a simple majority of the Senate would be able to bring debate to a close and obtain a vote on a pending measure. But after a bitter fight in which eight Republican Senators joined fifteen Democratic Senators from the South, the efforts of the majority leaders, which carried the support of President Truman, proved unavailing. The rule finally adopted provided that debate could be shut off after a stated interval by a vote of two-thirds of the sitting members except that any future attempt to amend the closure provision would be immune from the application of the rule. The net effect of this was variously interpreted, but it was the opinion of many well informed students that it did little or nothing to ameliorate the situation.

Two other matters of the highest significance remain for the future to deal with, though there is more awareness of their importance at present than ever before. One involves the curious system of giving the chairmanships of the standing committees in both houses of Congress to those who have been there the longest. Irrespective of ability, reputation, leadership in the party, or any other factor, these important positions have been bestowed on those who can be called Nestors in Congress. During recent years the system has been more bitterly attacked in the press and elsewhere than ever before, perhaps because several of the most influential chairmen have behaved in a highly sensational if not a scandalous fashion, making not only themselves but their party somewhat ridiculous by their fantastic utterances. There are few who have much to say in defence of the seniority system, though there are doubtless many who for reasons best known to themselves continue to favour such an irrational arrangement. But the difficulty is a suitable substitute, and here there is great difference of opinion. The most obvious plans of having chairmen elected by the two Houses or by their fellow members on the committee are questioned because

of alleged fears that an even more unfortunate situation growing out of political manipulation would result. But if public opinion continues to develop at its present rate, it seems probable that a change will be made within the foreseeable future simply because of the feeling that no method of filling chairmanships could be worse than the present one.

The second remaining major problem is not exclusively legislative but rather has to do with the relationship of the executive and legislative branches of the government. The doctrine of separation of powers continues to have its ardent supporters, but as a practical matter the gulf which divides the President from Congress and leads to rivalry and friction rather than teamwork and co-operation is coming in for more and more concern on the part of serious-minded persons. The record does not show that the business of the United States can be handled very satisfactorily on the basis of the pulling at cross purposes which has frequently been the rule. But again the question is what can be done by way of a substitute. Theoretically the Cabinet system seems the answer, but as a practical matter there are few who think that the Cabinet system could be introduced into American government. President Truman has resumed the holding of weekly conferences with Congressional leaders, but it does not seem that this will prove too effective, judging from the experience of the past. The thinking of those who have crystallized their ideas at all seems to point in the direction of a reconstruction of the existing Cabinet in such a manner as to include Congressional leaders as well as a small number of heads of general administrative agencies. Such a Cabinet, it is hoped, would have sufficient prestige to influence the President and at the same time would inspire the confidence of Congress. Strengthened by a secretariat, it is argued that it could go far in harnessing the executive and legislative branches together into a working team. But there remains much confused thinking in this field, and it would require a daring prophet to predict when sufficient clarification and agreement will be attained to bring about action.

“THE MOST REMARKABLE OF ALL THE INVENTIONS OF MODERN POLITICS”

by LINDSAY ROGERS

(Burgess Professor of Public Law, Columbia University)

THE Senate of the United States is now the most powerful second chamber in the world. In all other constitutional systems of government the powers of upper chambers have waned. The authority of the Senate has waxed. The Parliament Act of 1911 greatly restricted the powers of the House of Lords and the Labour Government intends to limit the suspensory veto to one year. The states which drafted new constitutions after the conclusion of the Paris peace treaties of 1919 set up secondary chambers whose vetoes could be set aside by special majorities in the more “popular” branch of the legislature. That is the model followed in the newest constitutions of France and Italy.

The framers of the American Constitution thought that the House of Representatives would be the more influential chamber and that the Senate might provide a salutary check on its excess of zeal. For a time the anticipations of the framers were correct. In the early days of the republic the House of Representatives was the more influential chamber, and the Senate acted principally as a council of revision. Now, however, the Senate presumes to lead the way in legislation, to influence, on occasion to determine, foreign policy, and to attempt supervision of the executive. In its origins it was a product of distrust of democracy. At present it can certainly be a brake on democracy, for Senators have a six-year term and one third of their number are re-elected biennially.

Sixty years ago, Sir Henry Maine declared that the Senate was “the one thoroughly successful institution which has been established since the tide of modern democracy began to run”. He measured its success, perhaps, because it might

raise a dike that would restrain the tide. Unlike the House of Lords under Liberal Governments, the Senate has always yielded to what was clearly the popular will. Hence only rarely is there any serious—and it is always a temporary—discussion of curbing its powers. And whether one likes the Senate or not, one must agree with Gladstone that it is a remarkable body—"the most remarkable of all the inventions of modern politics." What are the principal characteristics of this remarkable body?

The theory of the bicameral system is that it may provide an appeal from Philip Drunk to Philip Sober. The famous dilemma of the Abbé de Siéyès is a little too simple: "If a second chamber dissents from the first, it is mischievous; if it agrees with it, it is superfluous." Explaining the need for a second chamber to Jefferson, George Washington poured a cup of boiling tea into a saucer to let it cool. "This", he said, pointing to the saucer, "is the second chamber." True it is that a Cabinet system like the British, in which the executive has an absolute prior veto on all legislation, makes this cooling or revisory function of an upper chamber less necessary than in a system where the Cabinet must follow as well as lead. But if the House of Lords were abolished and nothing put in its place, the increased burdens of the House of Commons would be unbearable; and even if, as applied to the United States, the Abbé de Siéyès' dictum were true, the Senate would still be necessary. The United States has a federal system of government and the peoples of the several states would be unwilling as state electorates to be unrepresented in one branch of the American Congress. Students of Congressional history might point out very persuasively that in the controversies between the House of Representatives and the Senate over what should go on the statute book, the Senate has never (save perhaps in the case of slavery) been a chamber which "protected" the states. Psychologically, however, the Senate is necessary.

Nor are objections raised to the equal representation of each state: Nevada with a population of 110,000 has two Senators, and so has New York, with a population of

13,500,000. There are no issues in American politics where equality of representation protects the small against the large states. The Constitution provides that no state may be deprived of its equal representation in the Senate without its consent. Some students of the Constitution suggest that the clause could be expunged from the Constitution by an ordinary amendment and that then another amendment might provide for a different method of apportioning Senators. But the matter is purely academic. There has never been any serious discussion of a changed basis of representation. Controversies have gone only to the powers that the Senate was asserting and to the manner in which it was using them.

In respect of its ordinary legislative authority, the Senate refuses to bow to the House of Representatives because this body is fresher from the people and presumably may more accurately voice the popular will. Long before the change in the method of electing Senators was effected (1913)—by popular choice instead of by the legislatures of the several states—the Senate was asserting its rights in respect of financial as well as ordinary legislation. The Constitution provides that bills for raising revenue must originate in the House of Representatives, and by custom appropriation measures originate there as well. But the Senate can strike out everything after the enacting clause and can insert its own measure. It increases and reduces taxes and appropriations.

With the Senate a much smaller body than the House of Representatives, it is natural that one out of 96 thinks himself much more important than one of 435. A body of *prima donnas* is inclined to insist on prerogatives, and popular election has not made Senators less modest. The legislatures may have sent to Washington persons who would have been unwilling or unfitted to endure the turmoil of popular choice, and electorates may choose some Senators of a demagogic type who would find no favour with a legislature, but the Senate has not become more or less remarkable by reason of the changed method of election.

It is in respect of three non-legislative functions and one matter of procedure that the Senate gains in interest. One

non-legislative function is relatively unimportant because it is so rarely used. The House of Representatives presents articles of impeachment of public officials or judges and the Senate acts as a high court. It then becomes a quasi-judicial body. The Senate's other two functions make it part of the executive.

The Constitution provides that the President "shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which may be established by law." Hamilton defended this provision on the ground that there would be "no assertion of *choice* on the part of the Senate"; it would feel no "other complacency towards the object of an appointment than such as the appearances of merit might inspire, and the proofs of the want of it destroy." Hamilton was wrong. Almost at once the Senate began to interpose vetoes on Presidential appointments. Fifty years after the adoption of the Constitution, commentators like Story could speak of the Senate as having powers simply of "consent or refusal" and but "a slight participation in the appointments to office." But there then was in gestation what is now known as "Senatorial courtesy", one of the greatest unwritten conventions of the American Constitution.

Senatorial courtesy has become a kind of *liberum veto*. It means that while the Senate does not nominate, it expects that the President, in naming certain office holders, will choose persons satisfactory to the Senator or Senators of the President's political party from the state in which the offices are located or from which the appointees come. "The strength of the pack is the wolf and the strength of the wolf is the pack." If suggestions of Senators are ignored or if their objections to Presidential appointees are flouted, the Senate will frequently not approve the nominations. I say frequently because in some cases there have been Presidential victories, but these depend on the accidents of circumstance and on imponderables: the strength and popularity of the President; the merit of the

appointee; the standing of the objecting Senators with their fellow Senators; and the general political situation.

On the whole, the Senate has shown restraint in interposing vetoes in the case of major appointments. The tradition has been pretty well established that the President is entitled to the Cabinet—the heads of the departments—he desires, and that the Senate will not interfere even though its majority may be politically hostile to the occupant of the White House. Between 1868 and 1925 there was no instance of the Senate refusing to confirm an appointment to the Cabinet. In the latter year the Senate declined to approve a nomination by President Coolidge for Attorney-General because of fears that the appointee's past connections might be incompatible with a vigorous enforcement of the anti-trust laws. In the last quarter of a century there has been no Senatorial veto on a Cabinet member.¹

The second great executive function of the Senate is in connection with foreign policy. The President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur". The language differs from the language on the appointing power. "By and with the advice and consent of" follow the words "shall have power" and come before the definition of the power referred to. It is doubtful whether the framers of the Constitution by such nuances in phraseology intended that the Senate should play the role in foreign policy that it has long insisted was its own. On occasion the advice and consent of the Senate have gone beyond affirmatives or negatives and have desired the substitution of Senatorial judgment for the judgment of the executive.

"One more than one third of our number", the Senate can in effect say, "will defeat this treaty in its present form, but we will be willing to agree if changes are made in the particulars we specify. We insist that our judgment is better than

¹ The Senate has refused to confirm a nomination by President Truman for the Chairmanship of the National Security Council—a post of greater importance than most of those held by members of the Cabinet. There was no question of "Senatorial courtesy". The objection was that the nominee had no "appearances of merit".

yours. Public opinion cannot touch us until it has forgotten or is distracted by other issues. We care nothing about delays or embarrassments *vis-d-vis* other nations. Hence you had better agree to accept the only conditions on which our minority will not exercise its constitutional veto." John Hay maintained that "there will always be thirty-four per cent of the Senate on the blackguard's side of each question that comes before them." He exaggerated, but there will always be minorities representing individual prejudices and interests.

The President of the United States has no weapon of party discipline that he can use in such situations. Because of qualities of leadership and by favouring Senators in respect of appointments, he may be able to influence votes on domestic legislation. It is far harder for him to assert such influence on questions of foreign policy when one more than one third may defeat his proposals and when, to neutralize an adverse vote of one, he must persuade two votes to go along with him. I remember how puzzled my British and Continental friends were in 1919 when the Senate refused to advise and consent to the ratification of the Treaty of Versailles and insisted on imposing reservations. European statesmen should have remembered the two-thirds provision; that President Wilson did not have a party majority in the Senate; and that even if he had a party majority he might not be able to control it. In respect of this great controversy, however, I venture to remark that, for the failure of the treaty, Mr. Wilson shared the blame with Senator Henry Cabot Lodge and his supporters. The President should have accepted the Senate's reservations which were not of crucial importance. His intransigence as well as Senatorial *amour-propre* made the United States formally withdraw from Europe.

As World War II came to an end, there was some discussion of the desirability of a constitutional amendment paring the powers of the Senate in respect of treaties and providing for their approval by simple majorities in both Houses of Congress in the same way that laws are approved. In theory there has always been much to be said for this and the case is stronger now that so many international commitments require ancillary

legislation in which the House of Representatives must join. But a constitutional amendment is not practical politics. Unless the Senate took the wrong side on some question of foreign policy and the excitement of the country remained at white heat, the Senate would not agree to an amendment curbing its authority.

Hence there were proposals that Senatorial advice and consent to ratify be circumvented by way of executive agreements approved by Congressional joint resolutions. This expedient has been frequently used. For example, it took the United States into the International Labour Organization. Perhaps resort would have been had to the expedient had not the Senate, following Dumbarton Oaks and the United Nations Conference in San Francisco, shown itself more "statesmanlike" than on many previous occasions in its history. By statesmanlike I mean the willingness of Senators to consent to a moratorium on their *prima donna* activities and to go along with what was undoubtedly the prevailing sentiment of the country. If and when one more than one-third of the Senate refuses to advise and consent to the ratification of a treaty which the country really thinks is in its interests, then there will be another abortive discussion of curbing Senatorial prerogatives and meanwhile they will be circumvented through executive agreements approved by joint resolution of Congress.

In one other respect—a matter of internal procedure—the Senate of the United States is unique among all legislative bodies in the world. It is the only important chamber in which debate cannot be curbed—in which there cannot be action when a majority of members are willing and eager to act. Parliamentary obstruction—filibustering—is a political sport for which the season is always open.

Before 1917 it was impossible to end debate in the Senate so long as any Senator wished to speak. There were frequent filibusters, for the most part engineered by individual Senators, with whom sympathizing colleagues occasionally joined. A Senator or Senators would hold up appropriation bills because they failed to contain items for public improvements in their states; or, as watchdogs for the Treasury, Senators would

filibuster against what they considered outrageous extravagances. It was rare, however, that any meritorious legislation was unduly delayed. The public looked upon filibustering as a political stunt with some obscene features, but it seldom became excited, and never effectively so until 1917. Then a filibuster in the Senate prevented the passage of a bill giving President Wilson authority to arm American merchant ships.

Public opinion was aroused and the Senate adopted a closure rule. This provided, in brief, that if sixteen Senators signed a motion to bring debate on a pending measure to a close, the presiding officer should at once state the motion to the Senate and should, on the following calendar day but one, lay the motion before the Senate and order a roll call. If two-thirds of the Senators present and voting wanted debate brought to a close, then thereafter no Senator could speak for more than one hour.

From 1917 down to the present Congress, the Senate has voted nineteen times on whether debate should be brought to a close, but the necessary two-thirds majority has been obtained in only four cases. During the last twenty years the Senate has always refused to invoke the 1917 rule and thus limit its garrulity. Some measures have been delayed, but it is correct to say that, save for civil rights legislation, no important statute in which there was any public interest has been kept from coming up for a vote.

Meanwhile, it developed that filibustering was possible in parliamentary situations where the closure rule might not apply. In order to delay consideration of civil rights legislation, Senators refused unanimous consent to dispense with the reading of the Journal, insisted that it be read, and then offered amendments and corrections, on which they made interminable speeches. When the Senate yielded to public pressure and framed its closure rule in 1917, no one had given any thought to possible obstructionist tactics in respect of such a measure as approval of the Journal. It was assumed that the Senate could, by a two-thirds vote, bring any filibuster to an end. But in 1948 the presiding officer of the Senate ruled that a motion to bring forward a bill (barring poll taxes in the

Southern states that have them) was not a "pending measure" and that hence the 1917 rule could not be invoked.

In the spring of 1949, Senators interested in civil rights legislation knew that in order to get it before the Senate they would have to amend the closure rule and make it apply not only to "pending measures" but to "motions to consider" and to everything else. On a motion to consider proposed amendments of the closure rule, there was another filibuster, which continued until the Southern Senators (who have always filibustered against civil rights legislation) agreed to a rule that was satisfactory to them.

The Senate will now be able to bring debate to a close on any "measure, motion or other matter" by an affirmative vote of "two thirds of the Senators duly chosen and sworn"—not two thirds of a quorum (one more than a majority of the members of the Senate), which was the requirement of the 1917 rule. This, it seems to me, is not of great importance. If the rule were invoked on a highly controverted matter, substantially all of the members of the Senate would be present. It is highly ironical, however, that after labouring to tighten the 1917 rule so as to impose a check on all filibustering the Senate ended by somewhat liberalizing the rule as it applies to legislation. Moreover, as the price of their concessions on "motions", the Southern Senators insisted that the new rule would not prevent their filibustering against proposals to change it.

Nevertheless, as I have said, Senate filibusters have never killed or seriously delayed important legislation that the country really desired.¹ Perhaps I insist on this because I belong to a school which believes that special considerations justify the fact that, alone among the world's legislative assemblies, the Senate of the United States cannot end debate when a majority of those present and constituting a quorum wish to do so.

To protect sections as well as states was one of the reasons

¹ I doubt whether the country really desires federal civil rights legislation to be imposed on dissentient Southern states. Non-Southern states have refused to approve such legislation for themselves in referendum votes.

why the framers of the Constitution provided two Senators for each commonwealth irrespective of its size. Happily, as I have said, there have been no important political issues on which the populous states have had opinions opposed to those of the smaller states. Nevertheless the Senators from states composing a great section of the country, although only a minority in the Senate, have a right to endeavour to prevent legislation unpalatable to them and their constituents. I think they are justified in using parliamentary tactics to keep the legislation from coming to a vote unless two thirds of the Senators wish to override them. From this point of view, filibustering is a weapon that Senators will use when they think that the states they represent will not be protected by the Supreme Court of the United States.

Moreover, with the American Executive holding office for a fixed term and never appearing before the Legislature to account for his actions, it is desirable that there be some place in the Congressional system where the party steamroller will meet an effective barrier. The House of Representatives cannot serve this purpose. Debate there can be more severely limited and freedom of decision more restricted than in any other legislative chamber in the world. If a party majority could similarly shackle the Senate the Chief Executive might be able to escape uninvestigated and thus unscathed.

In the administration of President Harding, for example, the Republican Party machine was powerful enough to prevent any investigation of maladministration by a House Committee, and Republicans in the Senate were not anxious to be inquisitors. Only because the Senators, who insisted on an investigation of the scandals, could filibuster and hold up all business until investigations were authorized did the Senate consent to inquiries. The American President never comes face to face with Congress, which should therefore, on occasion, through its committees, be able to act as a High Court. The Senate's refusal to limit debate save by a two-thirds majority of Senators duly sworn is a guarantee that when the occasion demands, party discipline or prestige will not suffice to keep the Senate from deciding to be a High Court.

THE SENATE DURING AND SINCE THE WAR

by ELBERT D. THOMAS

(Senior Senator from Utah; Chairman, Committee on Labour and Public Welfare).

FOR the British reader and even for that reader among the British who has learned his American Government from our textbooks there are a few things that must be kept constantly in mind or he will misinterpret our governmental processes and our words in relation to them. First of all, while we have separation of powers in our government it is not the same separation that Polybius thought he saw in Roman Government, nor is it the same separation that Montesquieu thought he saw in the British Government. And I am sure that our own Founding Fathers who thought that liberty could be maintained through a separation of powers never foresaw what has taken place in the evolution of the American Federal Government.

Constitutionally, we definitely have the separation. The Constitution says that legislative powers shall be in the Congress, the executive powers in a President, and that the judicial powers shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain. Thus the picture as given in the Constitution, to those who talk and do not see, is a pretty one and results in assumptions that make our governmental processes too simple. There is a separation to be sure, but that does not mean that we have a government of three distinct compartments and that there is no intermingling of powers. Judges do make law. Executive action and decisions bring the equivalent of law, and both Congress and the Executive have much to do with the making of judges in that the President appoints but his appointments must be confirmed by the Senate.

The growth of the executive department compared with

the growth of the courts and the legislative branch has been so great, especially during and since the second world war, that to call it a balance would be a misnomer, and to assume that the combined power of the legislative and the judicial branches could act as an equal check would be an assumption that would be hard to prove. But this much must be said. There is only one Government of the United States of America. Sometimes the Executive has his way. Sometimes the Courts have their way, and at times even Congress has its way. But despite the fact that the American tradition is that our government shall be a government of law and not of men there really is not much the law can do after men get a hold of it. In this the spokesmen for the American people acquiesce. They, of course, would deny it. It is easier to imitate a great oration of one hundred years ago than it is to think of a speech of your own.

If the legislatures counted for much in the American scheme, sometimes a university president might recommend a legislator for an honorary degree. But that he seldom does. The administrators of a good law have shoulders bent with the weight of honorary degrees just as our "brass and brain" seem to have lost all ideas of wearing a jacket for utilitarian purposes and seem to have the idea it is merely "a something" on which to hang ribbons. In the political field in the United States an almost universal tendency exists to blame Congress for almost everything undesirable in the life of the nation. Probably this is true because under the Constitution and by the almost untrammelled votes of our citizens, the men and women who sit under the Dome of the Capitol have been assigned the function of interpreting the desires of these citizens and of making the policies which supposedly carry them to fruition.

Political parties in America are not professional. The representatives of the people in the Senate and the House must be inhabitants of the states from which they come. That simple device written into our Constitution gives us in practice no national parties as such. The Democratic Party is nation-wide to be sure, and the Republican Party recognizes

the whole of the nation in its national conventions. In reality, there are forty-eight Democratic Parties which unite once in every four years in an attempt to elect a President and there are about thirty-seven Republican Parties which attempt the same thing every four years. The Republican Party in the South-Eastern part of the United States is a factor in the nomination of the Republican candidate for President, but with the exception of the election of 1928 Republican influence south of the Mason-Dixon line has not been great since the Republican Party came into existence. The Democratic Party, although universal as far as its name is concerned, is not a unit when its representatives reach Congress. There is a great deal of difference between the Democratic Party in Virginia, for example, and the Democratic Party in Utah or Colorado.

When I say that our political parties are not professional I mean to point out that leadership in them does not persist within the state or the nation as it does in most European political parties. In some of our cities we have a political boss, as he is called, who seems to go on in defeat quite as much as in victory because there is seldom a clean swept victory. There is pretty generally a councilman or a commissioner left, and he has access into the city's affairs which gives him a sort of continuity of powers. We speak of a losing President as a man having titular headship in our national parties. But this headship amounts to much or it amounts to little according to the man.

Our political parties are not professional in another sense. They are even strongly traditional. They are not built upon economics. Their fundamental principles are generally clear enough cut after a review of a half century of Democratic or Republican stands or platforms. Members of the same family belong to different political parties. The great independent vote is a factor. There is much going and coming in the parties, and the fact that nationally the parties only express themselves once in four years, the man who has not an urge does not do much about politics in between those elections, and in many instances he votes for the man and not the party.

Now to discuss the Senate. The Senate came into existence as one of the compromises of the Constitutional Convention. While it was not pointed out that we were actually writing into our Constitution the rottenest form of "rotten boroughism", the American people have not realized that we instituted the equivalent of a "rotten borough" system. The inequality of a representation wherein we limit each state to two Senators does not seem unequal to us because our Federal Government must of necessity emphasize the theory of the equality of states. The functions of a Senator are so much more national in their scope than they are local that the American people have never been aroused into feeling that the Constitution established an unjust system of representation. And especially do they feel this because representation in the lower House is based upon population. There are lots of tempering influences in the make-up of the Senate which makes it possible to recognize a sort of equality among the Senators despite the differences of their constituency. When we think of little Rhode Island and overly large Texas, when we think of wealthy New York and poor Mississippi, when we think of populous Illinois, Virginia, and California and compare them with Utah, Nevada, and Arizona we cannot sense equality. But it is there. The voting power is equal. The Senator of ability does come to the top regardless of the size of the state he represents.

Then there is the seniority principle. The Senator from the smallest state of the union may become chairman of the most powerful committee in the nation. The power of a committee, of course, is always relative. The Military Affairs Committee becomes very much more important, during war. The Finance Committee which handles taxation looms important in depression times or whenever there is to be a change in a taxation law. The Foreign Relations Committee becomes important or dims in its importance as America moves into or out of world affairs.

Since the Reorganization Act of 1946 there has been more equality between the committees than there ever has been in the history of the Senate. In reducing the number of committees

and multiplying their functions there are now no unimportant committees. All have great powers. The ironies which are reflected in any reorganization endeavour have come to the fore in this Reorganization Act. For example, there were two committees which were deemed relatively unimportant, so much so in fact that in the limiting of Senators to two committees an exception was made in the case of what were thought to be two unimportant committees wherein deviation from the general rule was made, and a Senator could serve on three committees if the third committee happened to be either the Committee on the District of Columbia or the Committee on Expenditures in the Executive Departments. Both of these committees, since reorganization, have become very important; the District Committee because of the question of "home rule" for the District of Columbia and the Expenditures Committee because it has taken on so much of the investigatory functions of the Senate. The "home rule" question brings up the whole range of civil rights and the white and black issue, which on analysis are nation-wide in scope.

What I said about the varying power of Senate committees was so apparent during the war that men who were not on the Services Committees, or the Foreign Relations Committee, or the Appropriation Committee, were not much in the mind's eye of the people, and they were not overworked as were the persons on the committees which became war committees. This, in and of itself, would have developed a condition demanding reorganization.

The war may have been a great contributing factor towards bringing about the reorganization of Congress, but reorganization would have come had there been no war. This is proved by the fact that there has been for years a Committee on the Reorganization of Congress functioning in the American Political Science Association and several committees, non-official in their nature, which were organized for the purpose of bringing about this reorganization. Some of these committees had the force of lobbies. But the conditions in Congress itself would have brought the reorganization on.

Before reorganization, there was no hard and fast rule

about how many committees there should be or the number of Senators who should serve on the committees. Then there was the necessity for increase in pay and extending Civil Service retirement rights to members of Congress, and a score or more of factors which seemed to have just grown up. All of these things helped in getting a committee on the reorganization of Congress started. But even then we were not allowed to work in all fields connected with reorganization. We were limited in our functions to such an extent that we could not suggest a change in the rules of procedure. The rules of procedure can make for abuse quite as much as laws dealing with the structure of a body.

In our reorganization committee we talked about doing away with the seniority rule and making it possible for chairmen to be selected on the basis of merit or knowledge of a given function of government rather than on the basis of seniority. When we got through discussing the question we discovered that seniority had just as many advantages as disadvantages. The rivalry now comes in getting on a committee rather than attempting to control it. Since the reorganization rules took from the chairman of a committee and placed in the committee itself the power of organizing the committee assistants, much of the power of seniority has been taken from the chairman.

Because of the bulk of the executive department, Congress felt itself relatively weak in dealing with the recommendations of the Executive even in the matter of law making. Therefore, through reorganization, experts of a very high calibre were added to the committee staffs and given good salaries so that we could withstand the pressure of expert advice coming from the executive departments. This may or may not have been accomplished, but at any rate we are, if we want to be, dependent only on our own and in every way independent of the executive pressures. Congress has accepted this new responsibility in a rather healthy way. The wise chairmen have not turned their backs on the executive aid but they have better facilities for scrutinizing suggestions and recommendations. Thus we attempted to make the checks and

balances system function a little better. Net gains at this date show themselves in the words used by representatives of the executive departments. Sometimes these men go so far as to say: "That is for Congress to decide."

Is the Senate of the United States a stronger body as a result of reorganization? I say it is. But it is not in the reorganization alone that the Senate has changed. The Senate's importance and its relative unimportance to the people of the United States and now to the people of the world is reflected in what the Foreign Relations Committee has done and what it is attempting to have done in the world. When I take note of the closeness of voting in the Senate and the number of tie-votes, I realize the importance of a Senator. A Senator looms now, in the councils of the world, very much more important than he ever did. I think I can safely say that without the aid of a sub-committee of the Senate there would probably have been no Dumbarton Oaks Conference, no San Francisco Conference, and no United Nations. It was the power of Senators that kept us out of the League of Nations and the major attempt towards world organization in 1919. The Senate's power then was negative. It was in reality a veto. The Senate's power since the second world war in international relations has been positive. It will, of course, never be given credit for initiation, but some of our Senators were very strong initiators. I question whether the strength of the American Government and America's leadership in the world today could have occurred without Senatorial initiation.

This bit of history has been told elsewhere but it is proper to repeat it here for non-American readers. After November 15, 1947, the Foreign Relations Committee met almost daily, both morning and afternoon, and sometimes on Saturdays, to hear testimony, reports, and to rewrite the European Recovery bills. In the present Congress, similar meetings have been held to enact the renewal of E.R.P. and E.C.A., and to work out the legislative approach to the Atlantic Pact, the Wheat Treaty, and Reciprocal Trade Agreements. What is particularly to be pointed out is that there has been almost full

attendance of all committee members at all of these meetings, which never could have happened under the old arrangement. In the writing of history I am sure the Second Session of the 80th Congress, as well as the First Session of the present Congress, will be remembered by these pieces of legislation if for nothing else. We could not have written bills as good as these nor have given sufficient time to study and thought for these tremendous undertakings on the part of the United States had Congress operated as it did before its reorganization.

Not all the popular criticism of Congress is always justified. In my opinion the failure of numerous Congresses in our history to act in accord with the President's promises to the people in winning elections do not or have not justified the phrase "rubber stamp" Congresses. The fact that the President is given by the Constitution certain legislative powers connected with approving or vetoing legislation, and is directed to make legislative recommendations to the Congress, indicates that co-operation between the executive department and Congress is essential for the American republican form of government. History has shown us on several occasions that when a Congress is predominantly made up of members of the party opposed to the President, neither the executive nor the legislative branches make headway, and the people's will is neglected more than at any other time. It must be remembered, however, that both the executive and legislative branches are distinct and under our system they must be kept distinct; and that Congress is specifically given powers to supervise the conduct of the executive department and, in the final analysis, to make the national and international policies which must be followed by the President and his assistants.

In this area, an act of the 79th Congress in addition to the Reorganization Act followed the same general effort to reorganize. To strengthen party responsibility, Senate party policy committees (both majority and minority) were authorized. The House of Representatives did not see fit to approve this part of the joint committee's recommendation. Therefore, at present, there are not policy committees in the

House. Senate policy committees have no direct supervision of legislation, reporting or voting, nor do they bind individuals or committees to any course of action; but through these committees, party policies or position can be clearly stated and alternative policies can be developed. Thus, through a consideration of national problems as a whole, greater emphasis can be placed on the nation's welfare as against special or sectional interest, and legislation which otherwise might be considered of only secondary importance is given general leadership.

Another feature of the policy committee plan is that, by combining with the President and his Cabinet, a joint Legislative-Executive Council could be formed, and in some instances the minority party policy committee could be included.

Of course, the degree of successful planning of the Joint Council would depend greatly on the personalities involved. But under this scheme fourteen members of the Senate would be taken into counsel with the President and his Cabinet, and Cabinet members would have an opportunity, for the first time in our history, of participating directly in forming a unified legislative programme. Through this procedure, clashes between legislative and executive branches could be avoided. To my knowledge, President Truman has not yet taken advantage of this facility. Had he done so there would have been no need for the occasional clashes between him and several members of Congress which have occurred.

The best illustration of what can be accomplished along this line is the story of liaison with the Congress and the State Department which took place during the war and the emergency period just prior to it. In the summer of 1939, when it appeared to many that war in Europe was certain, the President of the United States asked for a change in our Mandatory Neutrality Act. This the Foreign Relations Committee denied. The reason given by the majority of the committee was that war would not come. When the new Congress convened in January, 1941, this action on the part of the Foreign Relations Committee was pointed out. Lend-Lease was in the offing and it was suggested that the Admini-

stration could not take a chance with that vital issue. As a member of the Committee on Committees of the Democratic Steering Committee, I suggested that no new Senator should be put on the Foreign Relations Committee, that Senators representing strong committees should be there so that if the President wished to use the Foreign Relations Committee as a Council of State, he would have such an organization. George Washington assumed that the Senate as a whole, when it consisted of merely twenty-six members, might act as such a Council. The Foreign Relations Committee in 1941 consisted of twenty-three members.

It was thought by some that Senators of long standing would not give up their seniority on other committees to serve in a lower position of the Foreign Relations Committee, but both Senator Glass and Senator Byrnes accepted the proposition. Senator Glass told me later how grateful he was for the opportunity it gave him to serve his country. The Minority Party (Republican at that time) also accepted the theory and Senator Austin gave up his ascendant position on the Judiciary Committee and accepted a lower place on the Foreign Relations Committee.

With this reorganization of the Foreign Relations Committee, the President had a Council of State if he wished to use it, for the committee then consisted of both majority and minority leaders and the chairmen of the following committees: Foreign Relations, Banking and Currency, Military Affairs, Education and Labour, Inter-oceanic Canals, Appropriations, Audit and Control, Pensions, and Public Lands, and in the course of time the majority party whip. Even after the reorganization of the Foreign Relations Committee, lend-lease was reported out of committee by just a one vote majority.

No sooner were we in war than I suggested that plans for peace should run along simultaneously with the development of the war. Soon afterwards Mr. Hull, Secretary of State, appointed a committee of experts to study for peace. A small group of Senators and Representatives were invited to meet with Mr. Hull, and Mr. Welles and these experts. Senator

Connally, chairman of the Foreign Relations Committee, appointed a sub-committee of eight Senators to consider any proposition for peace which might be referred to the committee. This committee of eight met regularly. At the time of its first meeting seven of the eight were opposed to doing anything about planning for the peace while we were at war. At the time of the reporting out of the Connally Resolution seven of the eight favoured that Resolution. This changed attitude, I am sure, came primarily because those of us serving on this committee were daily struggling with this great problem and became convinced that a constructive start was necessary. Thus, through the Connally Resolution, Congress spoke in favour of world organization to prevent war. The Dumbarton Oaks Conference was called. The Hot Springs Conference on Food and Agriculture was called. The International Labour Organization came to America in 1941 and then again in 1944 for the great session where it adopted the Declaration of Philadelphia. The San Francisco Conference was called and the United Nations Charter was worked out, providing for various branches of international activities under the Charter. The Senate ratified the Charter. The Senate ratified the Constitutions of the United Nations Food and Agricultural Organization and the United Nations Educational, Scientific, and Cultural Organization. These were all done while we were still at war. And before the world was legally at peace, the Senate of the United States acted on the compulsory jurisdictional provision of the International Court of Justice. In the formation of all of these international organizations the voice of the American people was heard through their elected representatives.

Without constructive leadership in the Senate of the United States these things could not have been accomplished. I emphasize the Senate's part in this programme because it has all too soon been forgotten, but most of all to show how much can be accomplished through the proper functioning of the policy committees provided for in our new organizational set-up of Congress, if they are used.

Here is another aspect of the Senate's activity in inter-

national organization: As early as 1935, in a conference made up of the Under Secretary of State, Mr. Sumner Welles, the President of the Foreign Policy Association, Dr. Raymond Leslie Buell, and myself, I advocated a closer relationship between the Senate and the State Department and the executive. I even suggested the use of Senators as negotiators of treaties and conventions because, inasmuch as the Senate has the last word on treaties, it should have a few first words too. The first reaction to this idea was cold, but eventually Senator White was sent to Cairo; I was appointed to the I.L.O. Philadelphia Conference; Senators Connally and Vandenberg were appointed to the San Francisco Conference. Senators Murray, Chavez, Austin, Wagner, Tobey and Brewster were appointed to other conferences, and much good has been accomplished through our attendance. This practice provides for a better understanding on the part of the Senate of treaties that are to be ratified and helps in their ratification. The practice also has contributed greatly to what has become an accepted idea of both major political parties—that foreign relations should be carried on as bi-partisan or non-partisan activities.

Has the power of the President been made less effective because of his partnership in action with the Senate? Has the power of the Senate been affected adversely because of its close connection with the executive in our foreign policy? Not even the old-fashioned stickler for the absolute separation of powers in our constitutional theory can point out any evil result coming from this close relationship. International relations are not relations which are aloof and far off. They are relations which affect the homes, the firesides, and the people quite as much as any wholly domestic question. The bringing of the people closer to these problems through the action of the people's representatives in no sense does violence to our constitutional scheme or its theory.

I recite this bit of history to show that the proper functioning of these policy committees cannot be over-emphasized. They are important because they provide facilities for creating a unified legislative programme, over-all planning and party

responsibility. Much of our Congressional weakness in the past has been due to the lack of responsibility for a comprehensive programme.

Did you ever realize that we do not know who invented the atomic bomb, that the power given to groups to work towards invention was granted by a small group of representatives of the American people who had become convinced that it was possible? Was it the force of the President which caused the Congress to say, "Here are two billion dollars, go ahead, experiment"? No President would have dared to have done it had he the two billion dollars. No university would have been brave enough to have done it had it the two billion dollars. And no scientist by himself would have undertaken it had he the two billion dollars. But when the representatives of the American people said, "You go ahead and we will not talk about it", something too remarkable for words occurred. Rivals in political parties and all that that means, representatives who like to talk and express their point of view and point out mistakes in others and all that that means, remained true to a trust. They did not talk about the bomb or the experiment. The manufacture of this bomb of trust and its fulfilment in a democracy where all that a government does is the business of the people is as remarkable as the invention of the bomb itself. The invention of the bomb represents the combined strength of nature and the people.

The power of the representatives of the people may again be shown. Another committee with survey possibilities has come into existence. The Chairman of the Foreign Relations Committee has appointed me chairman of a sub-committee on resolutions relating to the United Nations Charter, world federation, and so on. From the actions of this sub-committee may come a future equivalent of the Connally Resolution of 1943 and the Vandenberg Resolution of 1948; one the forerunner of the United Nations and the other the forerunner of the Atlantic Pact.

THE HOUSE OF REPRESENTATIVES

by CHRISTIAN A. HERTER

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EVERY two years in the United States on the first Tuesday after the first Monday in November in even numbered years an election is held in each of the forty-eight states for the purpose of choosing Representatives in Congress. A total of 435 members are sent to the House of Representatives from all over the United States, elected by a plurality vote from among the nominees presented by the different political parties.

Unlike the upper body of the Congress, the Senate, where representation consists of two Senators for each state no matter what its size, the number of Congressmen from any given state is determined on a population basis. This may provide those states with small populations only one representative in Washington, as in the cases of Delaware, Nevada, Vermont, and Wyoming, while the large and more densely populated states send many more. New York State, for instance, has forty-five representatives in Congress. In addition, a Delegate is sent from Hawaii and from Alaska, and Puerto Rico has a Resident Commissioner in Washington. These three are permitted to participate in the debates and to sit with committees, but do not have the right to vote.

In order to be eligible as a member of the House of Representatives, a candidate must be twenty-five years of age, must have been a citizen of the United States for seven years, and must be a resident of the state which he represents. Although he usually is a resident of the district in that state which he is representing, it is not required that he be so.

After having been elected, a Representative reports to Washington when each new Congress convenes early in

January. Offices and complete office equipment are assigned to him in either one of the two Congressional office buildings, and in addition he is entitled to free office space in the most convenient Post Office Building in his own district. In Washington he is allotted two rooms—one for himself and one for his staff. The amount of staff he requires depends in large measure on the type of district he represents, the committee to which he is assigned, and, after he is a little more established in the Congress, the issues in which he takes special interest. He may find that one competent secretary can handle the work load, or he may find it necessary to have five secretaries and clerks. It is not usual, however, to have as many as five on the staff of his Washington office because most members maintain an office in their home district where constituents can receive advice, information, or help.

The pay of a House member is \$12,500 per annum. He also receives tax free an annual expense allowance of \$2,500, stationery allowance of \$600, telephone and telegraph allowance of \$500, and travel allowance consisting of twenty cents per mile for one return trip between his home residence and Washington. His allowance for secretarial help comes to about \$20,000 per year. If he should be a committee chairman, he is entitled to a larger office suite and more assistance.

At the beginning of his two-year term of office, each member takes the oath of office as follows:

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

I have cited this oath only because of its emphasis on the Constitution of the United States. A few years ago a President urged the Congress to pass a piece of legislation no matter what doubts the members might have as to its constitutionality. He also tried to enlarge the Supreme Court so that he could

appoint enough new members to ensure the constitutionality of some of the legislation he was advocating. The constitutionality of legislation is an unending source of dispute, but the existence and sacredness of the Constitution has held the Federal Union together on many occasions when the states might easily have parted company.

After the people of the United States have elected their Representative, they are not content to remain silent. Since they are directly affected by many of the decisions made in Washington, they send a steady flood of letters and telegrams urging him to support this issue or oppose that one. A member may get from a thousand to fifty thousand letters in a session from his constituents. If he is a good politician, he will try to answer every letter, no matter how foolish or irritating its contents. After all, he has to run for re-election in two years. A good staff can do much for him, but the physical labour of supervising the handling of as large a volume of mail as this requires a great amount of time and often great ingenuity. Each constituent feels that his opinions or complaints are important, and unfortunately he has been brought up to believe that most of the troubles of the world, as well as his own troubles, can be solved by "writing your Congressman". It is not unusual to be asked to hunt down the individual who put chewing gum into a package of frozen strawberries and to pass a law to punish him. It is a commonplace matter to be asked to find suitable employment for a constituent or members of his family—not necessarily on the public payroll, but in private establishments. At a guess, I would venture that not twenty per cent of a member's mail deals with legislative matters, except at such times as a strong pressure group puts on a special mail campaign. A much larger percentage is of the "errand boy" variety, requiring contact with the many government departments on such matters as civil service ratings, veterans' benefits, tangled accounts, passports, naturalization cases, government contracts, etc.

Over and above the more normal duties, members are often asked to arrange for hotel or travel accommodation for their constituents, besides acting as guides to the spots of.

interest in Washington and furnishing free entertainment. High school children seem to indulge in endless debates, the material for which is expected to be supplied from their Representative's office, while the capacity of constituents to absorb free pamphlets published by the Government on every conceivable subject is inordinate.

If I have laid undue stress on what might be called the extra-legislative chores of a Representative, I have done so only to explain the riddle which puzzles so many visitors to Washington; namely, the small number of members who are seen at any given time on the floor of the House, even when important debates are in progress. An elaborate system of bells brings them to the floor whenever a roll-call vote is ordered or when some member protests the absence of a quorum or when the majority and minority whips send out urgent telephone pleas because a vote on some important amendment is about to come up. The rest of the time (i.e., after twelve noon when the House meets each day) most of them remain in their offices to keep abreast of routine work.

Most of the work of the House is done in committees. Every bill filed must be referred to some one of the standing or regular committees. Every member serves on only one of the major committees of the House, of which there are fifteen. Majority members assigned to one of these cannot serve on any other. These committees are on Agriculture, Appropriations, Armed Services, Banking and Currency, Education and Labour, Foreign Affairs, Inter-state and Foreign Commerce, Judiciary, Merchant Marine and Fisheries, Post Office and Civil Service, Public Lands, Public Works, Rules, Veterans' Affairs, and Ways and Means. Having been assigned to one of these, a minority member may be asked to serve on one of the minor committees—District of Columbia, Expenditures in the Executive Departments, House Administration, and Un-American Activities.

Of all these committees, probably the most important are the Appropriations Committee and the Committee on Ways and Means. All bills having to do with the appropriation of money must originate in the House of Representatives. The

Appropriations Committee reports out all legislation carrying appropriations—this year amounting to a total of over forty thousand million dollars. The Ways and Means Committee is responsible for all legislation having to do with the raising of revenue, tariff, or any sort of taxes.

Each committee meets regularly or on call by the Chairman to consider the bills that have been referred to it. Committee Chairmen and the Administration leadership decide which bills are of major importance and in which order they should be given consideration. On these bills, public hearings (all of which are printed) lasting several days or several weeks are held so that interested individuals can testify before the committee for or against the proposed legislation. The committee then considers the bill and submits its report to the Congress. The bill can be reported out in exactly the same form in which it was introduced, it can be amended in committee, or the committee may decide not to report it out at all. When a large number of different proposals on the same subject have been submitted in bill form to a committee, that committee may hold hearings on all the proposals, and at their conclusion may incorporate the best provisions of each bill into a new bill which the committee writes and some senior member reports out. If the committee, on the other hand, delays action on a bill or decides not to report it out at all, a petition to have the bill discharged from the committee can be filed by any House member. Then, if 218 members (a majority of the entire House) sign the discharge petition, the bill is brought up directly on the Floor without committee action.

As each bill is reported from the committee, it is placed on the calendar where it belongs and is then brought before the House in its proper order. Bills which are of minor importance and essentially non-controversial are disposed of from what are known as the Private Calendar and the Consent Calendar when these Calendars are read on alternate Mondays and Tuesdays. They consume very little time. Controversial and important bills are brought before the House under special rules. The latter are granted or rejected by the Rules Committee, a small committee consisting of only twelve members—

eight from the majority party and four from the minority.¹ This Committee is, in effect, the traffic director for legislation. It has power to grant or refuse a rule, decide on the hours of general debate commensurate with the importance of a measure, what technicalities should be waived or whether amendments can be offered. Each rule granted by the committee must be accepted by the House after one hour's debate before the bill for which it was devised can itself be debated. In theory, at least, the Rules Committee is a steering committee for the majority party, but in recent years it has refused rules on so much legislation, thereby blocking it, that the present session of Congress clipped its wings by providing for an appeal from its decisions if such appeal is made by the chairman of the committee asking for a rule and after the appeal has been filed for a period of twenty-one days.

Once a rule has been voted by the House, the House then resolves itself into the Committee of the Whole House for consideration of the bill itself. This procedure merely consists of having a chairman, selected by the Speaker, preside over its deliberations, with one hundred members instead of two hundred and eighteen a quorum for the transaction of business. General debate then ensues for the length of time provided for in the rule, with the majority and minority dividing the time in equal amounts. The Chairman of the Committee which has reported the bill and the ranking minority member of that committee have complete control over the time for their respective parties and can allot as much or as little of it as they desire to any member. Other committee members are usually given preference.

As soon as general debate on a bill has concluded, it is then read section by section by the Clerk, and amendments can be offered to each section or substitute bills which are germane can be offered to the whole bill. During this time, no member can speak for longer than five minutes or more than once on an amendment. Amendments are accepted or rejected by voice vote or by a count of members passing

¹ The other standing committees average twenty-five members, with the exception of the Committee on Appropriations which has forty-five.

between tellers in the centre aisle of the House. No roll calls are permissible in the Committee of the Whole, but as soon as the amendment stage is over, that Committee, through its Chairman, reports to the full House what has been done. At that time, members can ask for a roll call on any amendment which has been adopted by the Committee of the Whole (not those which were rejected) or on the bill as amended. The minority side has the privilege of offering one motion to recommit the bill (which would kill it if adopted), or to recommit with instructions to the committee to report it back immediately with some germane amendment.

If passed by the House, the bill then goes to the Senate for its consideration and action—and vice versa, except in the case of appropriations bills. Should there be differences in the bill as passed by the Senate, the House may take up each amendment separately and may vote to agree to it, agree to it with amendment, or disagree. If there is disagreement, the bill then goes to a Committee on Conference made up of selected members from both the House and the Senate. This committee works out the differences in the two versions and their agreement is embodied in a report. When the report is submitted on the Floor, the House accepts or rejects it. If the former, it then goes to the President for approval and signature (assuming that the Senate has also accepted the report). If the latter, it goes back to the Committee on Conference for further discussion.

Such, in brief and inadequate form, is our legislative procedure. During the two-year term of a Congress, a tremendous number of bills are introduced. To date, the all-time record was reached in the 61st Congress (forty years ago) when 33,015 bills were filed in the House and 10,897 in the Senate. A more nearly normal figure for both branches is roughly 15,000. Approximately one in ten of those introduced is likely to be enacted into law, of which not more than thirty or forty are of real national import.

Political scientists are continuously debating what most of them consider to be the outmoded procedures under which our form of government operates with the constantly increasing

work load which it is taking on. They claim that it is not geared to modern times and Congress is singled out from the administrative and judicial branches for particular criticism. Some of the fault-finding is laid on the doorstep of the Senate for its endless debate and filibustering. More is directed at the House because of its size and unwieldiness. For the two together there is a natural impatience because they often operate at cross purposes with the administrative side of the government and with each other, and spend considerable time in probing the actions of administrative officials or administrative bodies. All of the criticisms, however, really narrow down to a question not so much of the performance of an individual Congress as of the organic law, our Constitution, which defines the relationship of the Congress to the Administration.

It is true that the conduct of our foreign affairs is seriously impeded by the fact that nearly every move in our present position as the world's great creditor nation requires some form of appropriation which must originate in the House. It is also true that the House has until recently played so small a part in our foreign affairs as to be very imperfectly geared to deal with them. It is likewise true that the great power vested in committee chairmen highlights the disadvantages of a seniority system which often places a man of inadequate capacity or actual hostility to the Administration in command of a key legislative position. All of these defects in our system cannot be effectively remedied unless we dig much deeper than procedures. The fault lies in the rigidity of the tenure of office of our President and in the impossibility of making the President responsible to the Congress or the Congress a part of a working team with the President. Only a drastic constitutional change can do this, but there are improvements which could be made without such a change.

Certainly much time could be saved if Senate and House committees could hold one set of hearings under joint sponsorship rather than as separate competing entities. In January, 1949, Mr. Paul Hoffman, the Administrator of the European Recovery Programme, together with top members of his staff, began his testimony on the second year's

authorization and appropriation for E.R.P. In September he was still testifying. His principal function, that of an Administrator, had to be subordinated to that of being a constant and key witness before four separate committees of the Congress. In similar fashion, Cabinet officers and other high officials must be prepared month in and month out to testify on matters of legislation or investigation.

Then again there is the matter of party responsibility inside the Congress. Democrats elected from the Southern States are as conservative in their philosophy of government as the most conservative Republicans, yet they bear a different party label. What in theory looks like a Democratic party majority at the present time is on many issues a minority. Even in the powerful Rules Committee of the House where the Democrats outnumber the Republicans two to one, the actual control lies in the hands of the four Republicans and three Southern Democrats who, on practically every question coming before the Committee (except civil rights legislation) act as a unit.

In spite of the defects I have cited, and in spite of the absurd amount of time legislators have to devote to matters other than legislation, the system still has great merits. The House (and the Senate too) is generally most responsive to public opinion—yet in the cumbersomeness of its operation avoids the pitfalls of over-hasty action. By having to return to the electorate every two years, it constantly receives a fresh mandate from the people, whereas the President with a four-year term, and Senators with a six-year term, are never so sure of their mandate. It can be argued that elections coming so often are a deterrent rather than a spur to good legislation, but as long as there is no provision for the dissolution of a government, as there is in most responsible parliamentary democracies, this opportunity for the people to be heard every two years is essential. While the House of Representatives seldom produces the type of historic debate for which the House of Commons or the United States Senate are famous, it nevertheless acts as the principal workshop through which the will of the American people is translated into law.

THE DEVELOPMENT OF THE COMMITTEE SYSTEM IN THE AMERICAN CONGRESS

by ALLAN NEVINS

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THE United States now has a "streamlined" Congress. It is considering the creation, under the recommendations of Mr. Hoover and his associates, of a "streamlined" Executive. Yet the more the national government changes, the more in some respects it is the same thing. Particularly does this seem to be true of Congress and its committee system.

The 80th Congress, the first to operate under the reorganization prescribed by the LaFollette-Monroney Act, was attacked by President Truman as the worst in the nation's history. If the results of the national election in 1948 furnish any indication, countless voters shared his opinion. The 81st Congress has been under almost equally scorching criticism for its blundering tactics, dilatory movements, and general delays. Instead of getting through its programme by July 31, as the authors of the Legislative Reorganization Act had expected each Congress to do, the close of summer in 1949 found it struggling in a morass of unfinished work, and its leaders threatening to keep the tired members in session until Christmas. Despite all efforts to give it greater efficiency, the Senate in the first six months of the session had spent almost one-seventh of its time in quorum calls. The *New York Times* on August 24, 1949, scolded Congress in old fashioned terms. The voters, it remarked, must find some means of getting assurances from Congressional candidates that "they will conceive it their duty to legislate rather than to quibble, delay, obstruct, and indulge in useless talk."

Throughout national history the committee system has been the flywheel in the more and more complicated mechanism of Congress. To be sure, committees are no longer quite

the all-powerful agencies they were when Woodrow Wilson in 1885 protested against their control of the government, and called for a stronger Executive leadership in Congress. Nevertheless, they are still unescapably the chief agencies by which Congress gets its work done, and hence the centre of legislative power. The power of the Speaker has waxed and waned. It was enormous under Thomas B. Reed and "Uncle Joe" Cannon, two strong men who held the gavel for most of the period 1889-1911; it was weaker under Champ Clark and Nicholas Longworth. The authority of Presidents over Congress has similarly risen, fallen, and risen again. It was great under Woodrow Wilson and Franklin D. Roosevelt, slighter under Coolidge and Hoover. But the standing committees retain their central place. The flywheel of the old-style Congress, they are still the flywheel of the streamlined Congress.

As Congress is largely a development from seed planted on American soil by English parliamentary practice, so the standing committees of Congress may trace their origin to colonial institutions. The early history of legislative committees in America, too long and complex to be traced here, is singularly interesting. In Tudor and early Stuart days, Parliament had shown a sufficient tendency toward the formation of standing committees to make the leaders of colonial legislatures familiar with the idea. Some of the colonial assemblies, as business increased, took up the system. Particularly did Virginia, Maryland, and Pennsylvania do a good deal to develop it. As friction between the assemblies and the Crown (or its representative, the colonial governor) grew, many legislatures also tended to evolve informal committees to manage their contests with imperial authority—small extra-legal bodies, often oligarchical in character, called *juntos* or *caucuses* or *rings*. The Continental Congress, uniting legislative and executive functions, necessarily gave the standing committee heavy emphasis.

The Federal Congress had hardly set to work under the Constitution than it found committees a necessity from the party as well as the legislative point of view. The two most

powerful House committees, as every American knows, are the Ways and Means Committee and the Rules Committee. The former was born as early as 1795 when Albert Gallatin, leading the Republican members in the House who opposed the Federalist measures of the Treasury Department formulated by the brilliant Alexander Hamilton, saw to the appointment of a Committee on Finance to superintend all appropriations and revenue measures. This body was a persistent critic and antagonist of the Treasury Department when the House majority and the Administration were in disagreement; a most efficient seconder of the Department when the House and Administration were harmonious. It grew into the Ways and Means Committee, which dominates the one great field specially allocated to the House as the Foreign Relations Committee dominates the field specially allocated to the Senate.

The way in which the able Gallatin established the power of his committee illustrates the general fashion in which such a body can make itself (if its domain is important) a prime factor in government. He saw to it that all reports from the Treasury, and all proposals for raising revenue, were referred to his committee. All estimates of appropriations for the coming year were laid before it. The Treasury was required to submit to it full comparative data on commerce, foreign and domestic, on imports and exports, on receipts and expenditures, and on debts and loans. Gallatin seized for the committee the right to report on the state of the national finances, on questions of revenue, and on the costs of each department of government—the committee thus operating heavily on public opinion. When a bill was brought in for granting money to set up trading posts with the Indians, already sanctioned by Congress, Gallatin insisted that his committee had power to review the subject. The House, he argued, had discretionary power to appropriate or withhold money for any object whatever, even if that object had previously been approved by the government as a whole. It need not be said that Gallatin made the committee a thorn in the flesh of Hamilton and the Federalist Party.

One by one, for party and legislative reasons, the important

standing committees came into existence. They have always varied greatly in dignity and power. Some committees which were once of high rank now count for little. With the Union almost complete (though Alaska and Hawaii stand on the threshold of admission) the Senate Committee on Territories now holds minor station. For most of the nineteenth century, however, it wielded great authority, and the deposition of Stephen A. Douglas from its chairmanship in Buchanan's Administration was a political shock which made the nation quiver. The principal House committees, apart from Rules and Ways and Means, are those on Armed Services (uniting the old Military Affairs and Naval Affairs), Banking and Currency, Commerce, Post Offices and Post-roads, Public Lands, and Labour and Education. The chief Senate committees, apart from Foreign Relations, are those on Appropriations, Judiciary (the Senate confirming all judicial appointments from the Supreme Court down), Armed Services, Finance, and Interstate Commerce. Sometimes a minor committee springs into sudden prominence. The House Judiciary Committee, for example, usually holds low rank; but of late it has been much in the public eye because legislation affecting displaced persons or refugees has come under its purview.

Historically, the number of standing committees has varied from period to period. In the first Administration of Theodore Roosevelt (in 1904, to be precise), the House had sixty, the Senate fifty-five. In the days of Herbert Hoover (1930), the number of House committees had fallen to forty-four, and the Senate committees to thirty-three. In Truman's first Congress, the roster had risen again to nearly one hundred. Some standing committees, of course, do almost nothing. Others dispatch a certain amount of routine work, which in some instances could better be done by executive departments. Still others rank among the great agencies of government, and are almost ceaselessly busy (often between sessions as well as during the sittings of Congress) with momentous affairs. As the business of Congress has become more technical and specialized, keeping pace with the

industrialization of the nation, committees have tended to grow more expert. Gone are the days when a Congressman could make such an entry in his diary as that which ex-President John Quincy Adams, just returned to Congress, wrote in the year 1831:

December 12.—Attended the House of Representatives. The appointment of the standing committees was announced, and I am chairman of the Committee on Manufactures—a station of high responsibility, and, perhaps, of labour more burdensome than any other in the House; far from the line of occupation in which all my life has been passed, and for which I feel myself not to be well qualified. I know not even enough of it to form an estimate of its difficulties.

Today the important committees are made up of persons who for the most part have some special knowledge in the appropriate field, and their chairmen nearly always have a recognizable fitness.

Without a large number of hard working committees, Congress could not possibly deal with the swollen flood of legislative proposals with which it is confronted. As long ago as 1890, when Speaker Thomas B. Reed seized almost autocratic power in order to expedite legislation, 7,000 or 8,000 bills were introduced in each Congress. The number rose until in the 61st Congress it exceeded 33,000. A rigorous effort to send private claim bills to judicial agencies has of late years caused a marked drop in the number of measures presented. The 68th Congress had only 12,474 to consider; the 69th only 17,415. The total, however, is still such that the primary function of committees is selection or screening. Every bill has to go to some committee. As soon as it is introduced, it is numbered and automatically sent by the Speaker to the proper body. Normally a great majority of measures die in committee. In the 67th Congress, for example, very nearly four-fifths of them never emerged from committee hands.

When Bryce made his last revision of *The American Commonwealth* in 1906, as for decades previous, the standing committees of the House were appointed by the Speaker. The memorable

revolt of 1910-11 against the czardom of Cannon changed all that. It had come to seem intolerable that one man should hold the keys to all the positions of political power in the House, and should come near to controlling the whole process of legislation. As a result of the "revolution", the new House rules set up a Committee on Committees to determine committee membership. A similar body exists in the Senate. Both Chambers go through the motions of electing committees, but inasmuch as the Committee on Committees has previously made the nominations, this is ordinarily little more than a formality.

But who chooses the Committee on Committees? In the House, the Democratic Party has based the Committee on the caucus. The Democratic caucus (that is, the whole body of party members) chooses the party members of the Ways and Means Committee; these members then make up the Committee on Committees. The Republicans have followed a different procedure. When they are in power, they base their Committee on Committees on geographic representation. The Committee has one party member from each state with a Republican representation in Congress (some Southern states commonly have none); and this member casts as many votes as there are Republicans in his state delegation. If Missouri has two Republican Representatives and Pennsylvania has thirty, the Missouri committeeman has only one-fifteenth as much voting power as the Pennsylvania committeeman. But actually the differences between the Republican and the Democratic machinery for choosing the Committee on Committees do not amount to much. The fact is that conferences of an inner group of party leaders largely determine the composition of the body.

So far as the selection of committees goes, the situation today is not vastly different from what it was when "Uncle Joe" Cannon, James R. Mann, and a few others controlled the House, while Nelson W. Aldrich, Mark Hanna, Orville H. Platt, and one or two more dominated the Senate. To be sure, the machinery has been made a little more democratic; the atmosphere of the two Chambers has been liberalized.

The leadership is more sensitive to the demands of the rank and file. But the party caucus, in the last analysis, determines party membership on the committees, and the party caucus is always dominated by a group of specially able, experienced, forceful men representing citadels of political power. These men know how to manage the caucus, and guide its selections. The conspicuous and influential committee chairmanships and memberships are assigned to men who have title to them—a title derived from seniority, expert capacity, power of hard toil, prestige as leaders, or skill in negotiation. The pulling and hauling, the bargaining and compromising, which arrange committee memberships, begin long before a Congress assembles. When the caucus is called to order, the committee slate is largely a *fait accompli*.

Ever since the beginning of the nineteenth century, when the House had (1802) only five committees, the principal committee chairmen have ranked among the major leaders of the government. Senator Stephen A. Douglas as head of the Committee on Territories was a great potentate in the 1850s. Representative Thaddeus Stevens as head of the Ways and Means Committee during the Civil War was another. Senators John Sherman and Nelson W. Aldrich as heads of the Finance Committee were later equally powerful. The nation will be long in forgetting the damage wrought by Henry Cabot Lodge as chairman of the Senate Foreign Relations Committee. Power tends to gravitate to such men. The ordinary member of Congress passionately desires the passage of some piece-of legislation; he cannot get it so much as glanced at without the favour of some committee chairman. To obtain that favour he is ready to furnish loyal support to the general programme of the House or Senate leaders. The committee chairman cannot always block a bill that he dislikes; he cannot always get a favourable report on a measure that he likes. Usually, however, he can go far toward doing both. And he has power to call committee meetings whenever he likes, power to prepare the order of business for meetings, and power to represent the committee in party councils. No wonder that the leading chairmanships are regarded as great

prizes—particularly when Senate, House, and Presidency are, as in 1949-50, under the control of the same party, with a resultant ease (at least theoretically) in passing legislation.

The best way to gain a committee chairmanship—and indeed, thus far almost the only way—is by gaining a seniority of service on that particular committee. The “seniority rule” has seldom been defied. It is defended on the ground that men of long experience have a natural claim to direct affairs. It is attacked on the ground that long tenure is by no means a guarantee of high ability or great strength of character; that, in fact, many men hold their Congressional seats long because they are supple time-servers rather than men of power. Not infrequently seniority has placed an obviously unfit man in a vital chairmanship. In 1941, when the Administration was straining every nerve to send aid to Great Britain, Senator Robert R. Reynolds of North Carolina, a violent antagonist of the defence programme and of assistance to the British Commonwealth, became chief of the Military Affairs Committee. The outcry against him reverberated throughout the country. Seniority has made Senator Pat McCarran of Nevada head of the Judiciary Committee of the upper chamber. Particularly since he has shown himself opposed to liberal legislation for the admission of European refugees, he too has been fiercely assailed as unfit.

The seniority rule seems likely to remain in general force, however, if only because it prevents bitter personal rivalries, factional sniping, and hearthburning; because, in a word, it is the best method of safeguarding party harmony. One of the greatest authorities on Congressional procedure, Representative Robert Luce, wrote years ago in its favour: “Promotion by seniority conduces most to content, and least endangers morale. Exceptions must at times be made, but the rarer the better for peace. . . . Though not the only factor in deciding merit, experience is the most important factor.” And in various ways young men constantly get their chance. For one thing, no House member has ordinarily been allowed to serve on more than one important committee, while Senatorial service upon more than two has been frowned upon.

For another consideration, changes in Congress are frequent, and a member who drops out for even one term loses all his accumulated seniority.

The expertness of the standing committees of Congress has, as we have said, slowly but steadily increased; and so has their disinterestedness and objectivity. Always rich in legal ability, Congress has come to value economic and engineering talent in proportion as the problem of modern society demand them. It is usually ready to give appropriate committee assignments to an agricultural expert like Senator Clinton Anderson of New Mexico, a labour expert like Representative Mary T. Norton of New Jersey, or a highly experienced manufacturer like Senator Ralph Flanders of Vermont. Observers have noted that committees have become more ready to let outside experts guide their work. "The most conspicuous instance of this", writes Roland Young, "is Senator Robert Wagner's sponsorship of the National Labour Relations Act. The bill was considered by the Committee on Education and Labour, and though Senator Wagner was not a member of the committee, he attended the hearings, questioned witnesses, and sponsored the measure on the floor . . . This is a splendid example of the willingness of a committee to accommodate itself to actual legislative needs." Senator Wagner, as it happened, was the man best fitted to direct work on the bill.

Each committee has its own office, and each its allowances for secretaries, stationery, travel, and other needs. The facilities furnished in books, papers, and expert counsel have grown strikingly with the years. High executive officers, including Cabinet members and bureau heads, have become increasingly ready to appear in person and answer questions, or to supply written statements. While Congress sits the press is seldom without some daily news story of executive testimony at this or that committee hearing. Supporters or opponents of proposed measures are constantly being invited to stage a debate before a committee or sub-committee. Party lines are by no means always strictly regarded in committee proceedings. It is true that the sub-committees, in which much of

the initial work is done, are exclusively or heavily composed of majority-party members. It is also true that when a measure of strictly party character, like much of the New Deal legislation, is in hand, the majority members will allow the minority men only a courtesy vote—if even that. But a great deal of legislation is non-partisan or bi-partisan, while party labels often mean little. The Franklin D. Roosevelt Administration would trust a Republican like Senator Styles Bridges or Joseph H. Ball a great deal more than a Democrat like Burton K. Wheeler; and its Senatorial spokesmen reflected this view.

The evils and drawbacks of the committee system have aroused much criticism. An incompetent, prejudiced, or lazy committee can do endless harm. If it will not report out a good bill favourably, the measure has little chance of passage. Senators can get a bill out of an obstructive committee only by unanimous consent, and House members can get it out only by obtaining the signatures of a majority of Representatives. If a careless committee reports a badly drawn or vicious bill, it may pass Congress simply by virtue of the committee recommendation, for the pressure of business is so great that measures are often carried without careful scrutiny or attempt at amendment. Especially in the House, committees have tended to break responsibility into too many segments, and to impede leadership. Then, too, the secrecy in which committee proceedings are normally conducted has objectionable features. Most of the real work of Congress (and especially the House) being done in committee rooms, and floor debate counting for little, the public has little chance of finding out what is really going forward until it is completed. The large number of committees, too, has made for duplication or conflict.

It was in an effort to abate these evils and to heighten the efficiency of the standing-committee system that the 79th Congress passed the LaFollette-Monroney Act and the 80th put it into effect. The number of committees, almost a hundred, was cut down by nearly three-fifths. To the forty remaining committees were given broader fields of activity,

more power, and augmented staffs. Each Senator was allowed a \$10,000-a-year assistant. To reduce the influence of pressure-groups, lobbyists were required to register, give the names of their employers, and state their salaries. To exclude many private claim bills, provision was made for sending them to the Court of Claims. New facilities were furnished for giving committees a steady flow of expert advice, and for synthesizing accurately the information they need.

No doubt in the long run the Legislative Reorganization Act will bear much useful fruit. To date its results have been somewhat disappointing because of the tendency of some Congressmen to evade its intent. The reorganization left forty-seven Senators and Representatives who under the old scheme would have been chairmen looking for an outlet for their energies. They wished to head something! More special investigating committees than of old were appointed. Then, too, the large committees began to split into more sub-committees than formerly. Some House committees presently had ten or twelve sub-committees, so that members who had formerly roved restlessly from one committee meeting to another now roved from one sub-committee to another. It was found that a majority of Senators, instead of appointing capable new men as their \$10,000-a-year assistants, simply promoted their old \$6,000-a-year secretaries to that post; while a number of men hired relatives—sons, a brother, even in one instance a wife. Private claim bills have still cropped up in Congress in large numbers. A great deal of this evasion, however, is doubtless temporary, and before long the reorganization will have fuller effect.

If a consolidation of committees, reducing their number, can be made effective, if more publicity can be given the work of sub-committees and committees, and if freer rules of debate can be applied in the House, the general nature of the system may be greatly improved. All this will take time and effort. Meanwhile, the slow general rise in the level of Congressional expertness, honesty, and ability—for such a rise has taken place and will, we hope, continue—must mean greater conscientiousness and efficiency in the committees.

CONDUCT OF AMERICAN FOREIGN POLICY¹

by HANS J. MORGENTHAU

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“FOREIGN politics”, says de Tocqueville with special reference to the United States, “demand scarcely any of those qualities which are peculiar to a democracy; they require, on the contrary, the perfect use of almost all those in which it is deficient . . . a democracy can only with great difficulties regulate the details of an important undertaking, persevere in a fixed design, and work out its execution in spite of serious obstacles. It cannot combine its measures with secrecy or await their consequences with patience.” The history of foreign policy conducted under democratic conditions, from Washington to Roosevelt, from Castlereagh to Churchill, from Guizot to Barthou, from Bismarck to Stresemann, illustrates the truth of these observations. The conditions under which popular support can be obtained for a foreign policy are not necessarily identical with the conditions under which a foreign policy can be successfully pursued. Whenever these two sets of conditions diverge, those responsible for the conduct of foreign affairs are confronted with a tragic choice. Either they must sacrifice what they consider good policy upon the altar of public opinion, or they must by devious means gain popular support for policies whose true nature is concealed from the public.

Countries with a long experience in the conduct of foreign affairs and a vivid awareness of its vital importance, such as Great Britain, have developed constitutional devices and political practices which tend to minimize the dangers to the vital interests of the nation, inherent in the democratic conduct of foreign affairs. Parliamentary democracy, especially under the conditions of the two-party system,

¹ In the preparation of this paper the author has had the assistance of Mrs. Virginia McClam of the University of California at Berkeley.

provides in the parliamentary responsibility of the Cabinet a mechanism which ensures the support, by the majority of the elected representatives of the people, of the foreign policies pursued. The collective responsibility of the Cabinet for the policies pursued compels the government to speak in foreign affairs with one voice, so that there can be no doubt, either at home or abroad, what the government's foreign policy is at a particular moment.

It is the peculiar quality of the conduct of foreign affairs in the United States that it maximizes the weaknesses inherent in the formulation and execution of foreign policies under democratic conditions and that it aggravates these inherent weaknesses by some unique constitutional devices and political practices.

On the constitutional level, the way in which foreign policy is conducted in the United States is determined by four general characteristics of the American Constitution: (1) its indefiniteness in assigning functions to the different agencies of the Government; (2) the separation of powers which allows the executive and legislative branches of the Government to hold office, and within certain limits to pursue policies, without regard to the other; (3) the system of checks and balances which within certain limits makes it possible for one branch of the Government to prevent another branch from pursuing its policies; (4) the requirement that under certain conditions measures can be taken by neither branch alone, but only through the concerted action of both. The Constitution nowhere makes clear with whom the ultimate responsibility for the conduct of foreign affairs rests. It assigns to the President alone certain specific functions, such as the reception of foreign diplomatic representatives; it assigns others, such as the regulation of foreign commerce and the declaration of war, to Congress alone; it provides for still others, such as the conclusion of treaties, which the President can discharge only in co-operation with the Senate. Apart from making these specific grants, the Constitution limits itself to an over-all distribution of powers between the President and Congress by vesting in the former the executive power and making him

Commander-in-Chief of the armed forces and by vesting all legislative powers and the power of appropriations in Congress.

To locate, with the guidance of these "great generalities" and specific instances, the seat of power in the conduct of foreign affairs remains a task for constitutional theory and political practice to perform. Jefferson's dictum that "The transaction of business with foreign nations is executive altogether" has claimed that seat for the President. On the other side of the argument, there is a chorus of voices which claim for the Senate, if not for both Houses of Congress, at least an equal share in the conduct of foreign policy. Constitutional theologians have covered these two positions with clusters of legalistic cobwebs—and have left the issue where the Constitution has left it: undecided. For in view of the affirmative powers granted by the Constitution to the President and Congress, the issue cannot be decided through constitutional interpretation. By giving some powers to the President, some to the Senate, some to Congress, and by remaining silent on the ultimate responsibility for the conduct of foreign policy, the Constitution, in the words of Professor Corwin, an eminent expounder of its law, "is an invitation to struggle for the privilege of directing American foreign policy." Just as the question of the location of sovereignty in the United States, an issue similarly held in abeyance by the Constitution, had to be answered once and for all by a civil war, so the issue of the ultimate responsibility for the conduct of American foreign policy is being decided, on each individual occasion as it arises, in a series of running battles between the Senate or the two Houses of Congress on one side and the executive branch on the other. Each side uses the weapons which the Constitution provides as well as the extra-constitutional ones which have grown in the shadow of the Constitution.

The political relations between the President and Congress are determined by the fact that the President can hardly ever be certain of having his policies supported by a majority of both Houses of Congress. This is obviously so when the President and the majority of Congress belong to different parties. Yet even if the President is a member of the majority

party, a minority of his own party will regularly vote against the policies with which he is identified. It is true that this defection is somewhat offset by the fact that generally a minority of the opposition party will vote in favour of the President's policies. Yet the traditional jealousy with which any Congress guards its prerogatives against any President will generally give the edge to the hostile minority of the President's party. Thus the President operates under the perpetual threat that his policies will be disavowed by a bipartisan majority of Congress.

To make such a threat come true Congress has three weapons at its command: legislation, appropriations, resolutions. To the same end the Senate alone can avail itself of its power of treaties and over the appointment of diplomatic representatives and the high officials of the executive branch.¹

The weapon of legislation can be used in two different ways. Whenever a foreign policy, in order to be effective, needs to be implemented by legislation, Congress has the opportunity of modifying, emasculating, or negating the foreign policy pursued by the executive branch. This situation is illustrated by the share which Congress has taken in directing the international economic policies of the United States. The silver policy of the United States can be regarded as the result of Congressional preferences; certain weaknesses of American trade policies must be accounted for by weakening clauses which Congress has inserted in the successive Reciprocal Trade Agreements Acts. Congress can also take the initiative and, as in the case of the neutrality legislation of the thirties and the successive immigration acts, limit the Executive's freedom of action through restrictive statutory provisions.

The weapon of appropriations, too, can be wielded in two different ways. Congress can either withhold in part or in

¹ This power of the Senate over appointments, by virtue of Article II, Section 2, of the Constitution, is in the field of foreign affairs a potential threat rather than an active weapon. The Senate has from time to time refused to confirm individuals nominated by the President to ambassadorial positions or high positions in the State Department; thus far it has not used that power for the purpose of making it impossible for the President to pursue a certain foreign policy.

whole appropriations necessary to the execution of a certain policy and thus cripple that policy or make its execution altogether impossible. The Congressional changes in the appropriations for aid to Western Europe, for the military aid programme, and the Voice of America, illustrate the potentialities of this weapon, which by virtue of the character of present American foreign policy is the most potent of all the weapons at the disposal of Congress. Or Congress can attach a rider to an appropriation bill, providing expenditures for purposes not contemplated by the executive branch. In that case, the President must either reject the appropriation *in toto* and give up the policy for which the appropriation was to be used, or he must accept the appropriation *in toto* and against his better judgment execute a policy imposed upon him by Congress. Thus Congress in 1948 earmarked in the bill providing for aid to Western Europe an appropriation for aid to China, a rider which the President had to accept since he did not want to jeopardize the European Recovery Programme.

Through resolutions, either joint or by one or the other House, Congress expresses its preference for certain policies, either before or after they have been inaugurated. While such expression of preference has no legally binding effect upon the executive branch, it indicates what kind of foreign policies Congress is likely to approve when it is called upon to act on them by way of legislation or appropriation. The Vandenberg Resolution of 11th June, 1948, for instance, calling for the conclusion of regional compacts for the purpose of mutual defence has influenced the form in which the North Atlantic Treaty was submitted to the Senate.

Public opinion has, however, come to regard the constitutional provision which requires the approval of two-thirds of the Senate for treaties negotiated by the President as the main weapon by which one-third of the members of the Senate plus one can veto the foreign policies of the executive branch in so far as they have taken the form of international treaties. In view of the relations between majority and minority party mentioned above and given a politically

controversial issue calling for a partisan stand, the chances of a treaty to be approved by two-thirds of the Senate are virtually nil. "A treaty entering the Senate", wrote Secretary of State Hay summing up his bitter experience, "is like a bull going into the arena. No one can say just how and when the final blow will fall. But one thing is certain—it will never leave the arena alive." The death-blows which the Senate dealt in the inter-war years to Presidential policies of international co-operation are remembered, for whatever different reasons, by President and Senate. As shall be shown in the course of this paper, their memory has exerted a powerful influence toward avoiding conflict situations and securing in advance bipartisan support for the foreign policies to be pursued by the executive branch.

The general power of Congress in the field of foreign affairs has been met by the President with the general weapon which his position as Chief Executive and Commander-in-Chief puts at his disposal, as the special power of a minority of the Senate over treaties has been parried with the instrumentality of the executive agreement.

The President as Chief Executive and Commander-in-Chief has a natural eminence in the conduct of foreign affairs from which constitutional arrangements and political practices can detract, but which they cannot obliterate. His powers in this field are, in the words of the Supreme Court, "delicate, plenary, and exclusive". Short of the expenditure of money, the binding conclusion of treaties, and the declaration of war, the President can well nigh do as he pleases in formulating and executing foreign policies. He can without reference to any other agency of government make a public declaration of policy, such as the Monroe or Truman Doctrines. He can refuse to recognize a foreign government or can recognize it, as succeeding Presidents did with respect to the government of the Soviet Union. He can give advice, make promises, enter into informal commitments as he sees fit. He can send the armed forces of the United States anywhere in the world and can commit them to hostile acts short of war. In sum, he can narrow the freedom of choice which

constitutionally lies with Congress to such an extent as to eliminate it practically altogether. If, for instance, the President had wanted to reply with armed force to the Panay incident of 1937 or the Berlin crisis of 1948, he could have done so on his own responsibility and could thus have committed Congress to a declaration of war regardless of the latter's preferences with regard to the initial policy which would have made war inevitable. The course of American policy toward Germany and Japan during the initial phase of the second world war was determined primarily by Presidential action, and it was left to Congress to ratify or, at worst, to retard and weaken the consummation of that course.

The favourite method through which the President has been able to an ever increasing extent to circumvent the participation of the Senate in the conduct of foreign affairs is the substitution of executive agreements, not requiring legislative approval, for formal treaties. The ascendancy of the executive agreement over the formal treaty has in recent years become such that the former is to-day the normal medium for international compacts. Most of the great political understandings of the war years, from the destroyer deal to Potsdam, were concluded by the President alone in the form of executive agreements. In 1939, ten treaties were concluded by the United States as over against twenty-six executive agreements. The corresponding figures for the following years are eloquent: 1940: 12—20, 1941: 15—39, 1942: 6—52, 1943: 4—71, 1944: 1—74, 1945: 6—54.

The relations between President and Congress, however, cannot be conceived only in terms of conflict, actual or potential. They must also be considered in terms of co-operation. For while the power of the President is pre-eminent in starting the course of American foreign policy, Congress's potential for obstruction remains and the dependence of the Executive upon Congressional consent has increased with the expanding financial requirements of American foreign policy. Thus President Roosevelt and Secretary of State Hull and their successors have developed a system of co-operation with Congress in the formulation and execution of

foreign policy. Its main purpose is the avoidance of the situation, which was the undoing of Wilson, in which the minority party opposes Presidential policies primarily because they are the President's and his party's policies. Three instruments serve the purposes of this "bipartisan foreign policy": consultation on the formulation of policy, participation in its execution, and information about its operation.

It has become the established practice of the executive branch to consult with the foreign policy experts of the two parties, especially those of the Senate, in advance of major steps to be taken, to secure their consent and to take their advice into account. This practice has worked with different results in different fields of American foreign policy. Republican leaders have been anxious to point out that the bipartisan foreign policy stops at the frontiers of Asia. The over-all result, however, has been the formation of a coalition, composed of the majority of the two parties, in support of the President's foreign policy.

The identification of the leaders of Congressional opinion with Presidential policies is further strengthened by their regular appointment to positions of responsibility at international conferences; for instance, former Republican Senator Austin is the principal American representative to the United Nations, and Republican Senators Dulles and Vandenberg and the Democratic Chairman of the Senate Foreign Affairs Committee Connally have been members of the American delegations to most political conferences of recent years.

Finally, the State Department maintains a branch under an Assistant Secretary of State for the exclusive purpose of keeping Congress informed on foreign affairs and to win support for executive policies among its members. The time which policy-making members of the executive branch must spend before Congressional committees, explaining policies, answering questions, and sometimes submitting patiently to abuse, however, by far exceeds the time required for the legitimate purposes of information. Recently, for instance, Mr. Hoffman, the administrator of the Economic Co-operation Administration, and his principal aids had for months

to use the better part of their working time to giving identical testimony to four different Congressional committees.

Here is the point where the bi-partisan policy of co-operation between Executive and Congress reverts back to the traditional pattern of conflict and competition. The insistence by Congress upon the full use of its inquisitorial powers, especially on the part of its least responsible members, is the more jealous and bitter as the pre-eminence of the Executive in foreign affairs is unassailable and Congressional frustration must find the semblance of relief in harassment and delay. Here is to-day the crux in the relations between the executive branch and Congress as concerns the conduct of foreign affairs. It can safely be said that, in a period of international relations dominated by the psychology and technique of the "cold war", the executive branch of the Government of the United States must make a greater effort to maintain friendly relations with the U.S. Congress than with the Soviet Union. The constitutional separation of powers and the political practices growing from it, together with the stalemate in Russo-American diplomatic relations, have brought about the paradox that the traditional diplomatic techniques of persuasion, pressure, and bargaining are applied by the executive branch of the American Government in its relations with Congress rather than with foreign powers.

Thus far we have referred to the President and the executive branch in their relations with Congress and foreign powers as though for purposes of foreign policy the President and the executive branch were one single entity pursuing one single policy. Nothing could be farther from the truth. It is, of course, true that the President as Chief Executive and Commander-in-Chief has the constitutional power to impose his own conception of foreign affairs upon the executive and military departments, with the exception, perhaps, of the independent regulatory commissions. In reality, however, even so strong and astute a President as Franklin D. Roosevelt was unable to assume full control even of the State Department, the constitutional executor of his foreign policies.

The reason for this anomaly must be sought in two factors. One is the absence of a Cabinet which on the highest policy-making level could integrate the policies of the different executive departments in the field of foreign affairs (the American Cabinet being an informal advisory body). The other factor is the frequent inability of the President, without risking inopportune conflicts with Congress, to resolve major dissensions between executive departments definitely or to meet head-on resistance to his policies on the part of an executive department. For Congress, ever jealous of the powers of the executive branch, is ever ready to take advantage of open dissensions within that branch. President Roosevelt, therefore, rather than taking on a reluctant State Department, entrusted the execution of his more delicate and controversial foreign policies to special representatives, operating directly from the White House, or created special agencies for the performance of special functions. Sometimes Roosevelt pursued foreign policies of his own without even the knowledge of the State Department. The classic example is Roosevelt's approval in June, 1944, of the division of the Balkans into British and Russian spheres of influence, while for almost three weeks afterwards the State Department continued to pursue a policy of opposition to the Anglo-Russian Agreement. Sometimes, as with regard to certain phases of Middle Eastern policy and Chief Justice Vinson's abortive mission to Moscow in 1948, the State Department emerges victorious from the struggle with the President.

The problem of unity of action arises not only between the President and the executive departments, but primarily and especially when strong leadership from the White House is lacking, among the executive departments themselves and even within them. Washington is the scene of continuous inter-office feuds, sometimes growing from real differences of policy, more often the result of a mere struggle for power. The Hoover Commission on Organization of the Executive Branch of the Government has counted about forty-five executive agencies, aside from the State Department, which are concerned with one or the other phase of foreign policy.

While most of them deal only with minor matters, some have exerted an important, and at times decisive, influence upon the conduct of American foreign policy. Among them the military establishment is outstanding. The main vehicle for its influence is the National Security Council, composed of the President, the Vice-President, the Secretaries of State and Defence, and the Chairman of the National Securities Resources Board. Its purpose is "to advise the President" in those fields of policy "relating to the national security". In a period of "cold war" the whole field of foreign policy becomes necessarily the proper object of the Council's advice. Among the more than thirty interdepartmental committees and boards which try to co-ordinate the often divergent views and policies of the executive departments as they concern foreign policy, the National Security Council is to-day the key agency through which the views of the executive departments are filtered. Through the daily reports of its executive secretary it exerts a most potent influence upon the President's mind.

The task of co-ordinating American foreign policy under the President's direction does not end with the settlement of disputes between executive departments. It extends to the executive departments themselves and their representation abroad.¹ The perennial example of an executive department divided against itself is the State Department. Having undergone in the last decade a five-fold increase in its staff and having been subject in recent years to almost continuous

¹ How urgent that task still is with regard to the Armed Services, in spite of their unification and the centralization of their political functions in the National Security Council, was demonstrated as recently as September, 1949, by an independent excursion of the Navy into the field of foreign policy. The official policy of the United States toward Franco Spain has been one of cool reserve in diplomatic and economic relations. Yet the Secretary of the Navy saw fit to send a squadron of warships on an official visit to Spain, the first since the Civil War. The embarrassed State Department was at pains to emphasize the non-political character of the visit and the American Embassy in Madrid took care to keep demonstratively aloof from the social functions and ceremonies through which the Spanish Government tried to underline the political significance of the visit. Yet the very fact of the visit and the attitude of the Navy personnel under a high ranking Admiral tended to support the Spanish interpretation of the event's significance.

reorganization, it had been unable to overcome the cleavage between the foreign service, that is, the diplomats proper, and the home office, between the geographical and functional units, and between the old-line officials and the members of the newer branches, such as information and research. Furthermore, certain ambassadors, such as Dodd in Berlin and Kennedy in London in the thirties and Hayes in Madrid during the second world war, were able for months to pursue foreign policies at variance with the policies of the State Department, if not the President. Generals Clay in Germany and MacArthur in Japan have largely formulated and executed their own policies which the executive departments concerned could do little else but ratify. It goes without saying that this diffusion of responsibility for the conduct of foreign affairs among and within the executive departments is reflected in numerous frictions among representatives of the departments in the field.

In the recent judgment of an experienced observer, President Dickey of Dartmouth College, "our procedures for the democratic review and execution of international engagements are . . . in an unholy mess". This is true of the whole field of foreign policy. That the American way of conducting foreign affairs works at all is due to that most elusive yet all-permeating factor which gives direction and unity to the American political system on all levels: public opinion. The Constitution makes public opinion the arbiter of American policy by calling upon the American voter to pass judgment upon the President and his party every four years, upon all members of the House of Representatives and one-third of the membership of the Senate every other year. The American people live perpetually in a state of pre-election or election campaigns. Presidential and Congressional policies are always fashioned in anticipation of what the voter seems likely to approve. The President in particular, as the most exalted mouthpiece of the national will and the initiator of foreign policies, will test from time to time the state of public opinion by submitting to it new policies in the tentative form of public addresses and messages to Congress.

These new policies will then be openly or surreptitiously pursued or else shelved according to the reaction of public opinion. Democratic control of American foreign policy, then, will depend largely upon the correctness of the estimate which the Executive makes of the willingness of public opinion to support its policies, and upon its ability to marshal public opinion to that support. It is here that another, and perhaps a fundamental, weakness of the conduct of American foreign policy becomes apparent.

The state of American public opinion is ascertained by a special branch of the State Department and by the intuitive estimates of individuals through the media of press, radio, public opinion polls, Congress, and private communications. Thoughtful observers did not need the evidence of a succession of Presidential elections to become aware of the distorted picture which the mass media of public opinion paint of the actual state of the American mind. While they may point with approximate accuracy to its lack of information, they give only a dim inkling of its native intelligence and moral reserves. Yet President and State Department seem to be taking at its face value the discouraging picture which the mouthpieces of public opinion convey of the moral and intellectual qualities of the American people. In particular, the fear of what Congress might do to their policies has become a veritable obsession with many members of the executive departments. This fear derives from a dual misjudgment of the powers of Congress as an organ of public opinion.

That this fear is not justified by the actual control of Congress over the conduct of foreign affairs has already been pointed out. That the temper of Congress and especially of the Senate is not necessarily representative of public opinion is evident from a consideration of the four factors which limit the representative function of Congress: the disproportionate influence of rural over urban representatives by virtue of the apportionment of Congressional districts favouring the former; the disproportionate influence of the less populous states by virtue of the representation of all states, regardless of

population, by two Senators (New York with more than 13 million inhabitants having the same representation in the Senate as Nevada with 110,000 inhabitants); the disproportionate influence upon members of Congress of the spokesmen of special interest groups, of which in foreign affairs the sugar and oil lobbies, the American Legion and certain ethnic and religious minorities have been the most potent; finally, the limited representative character of members of Congress from a number of Southern states by virtue of the limitation of the franchise to a small fraction of the population.

The mistaken identification of press, radio, polls, and Congress with public opinion has had a distorting as well as paralyzing influence upon American foreign policy. It is here that the way American foreign policy is conducted has a direct bearing upon the kind of foreign policy pursued by the United States. By equating what Congress will approve with what the American people might be willing to support, President and State Department underrate the intellectual and moral resources of the American people and are demanding less of the American people than they could obtain. In consequence, the foreign policies which they present to public opinion for approval often stop short of what they deem necessary in the national interest. More particularly, they have thought it wise to resort to shock and overselling tactics in order to persuade public opinion of the need for new departures in foreign policy, such as military support of Greece and Turkey and the Marshall plan. Not only have they in this way made illusory hopes, fear and hysteria the prime movers of popular support: they have also become the prisoners of their own propaganda which limits their freedom of movement.

This fear of public opinion, especially in the form of Congressional opinion, together with the ever present risk of conflict between the Executive and Congress and within the executive branch itself constitutes a very serious handicap for any fresh departure in foreign policy. If one wants to win the next election, if one wants to advance in the bureaucratic hierarchy, if one wants to retain and increase the

powers of one's office, it is well to avoid conflict and to swim with the prevailing current. Yet any fresh departure in foreign policy, especially in a period of "cold war", means conflict—conflict with a half-informed and at times hysterical public opinion, conflict with a suspicious and reluctant Congress, conflict between and within executive departments. Such conditions make of routine and inertia an expedient, if not a virtue. Thus the foreign policy of the "cold war", with its emphasis upon military preparations and its minimization of the traditional methods of diplomacy, is in a sense the foreign policy which the procedures of the American Government are best fitted to conduct. Yet the foreign policy of the "cold war" is not the best fitted to preserve peace. Thus the overriding concern for the preservation of peace makes imperative a change in the methods and, more importantly, in the spirit in which American foreign policy is conducted.

The factors which determine the conduct of American foreign policy co-operate as a brake upon executive initiative in foreign affairs. The evils which de Tocqueville finds in the democratic conduct of foreign affairs are compounded by the peculiarities of the American constitutional and political system. Not only does Congress act as a brake upon the executive branch, as it should, but so does public opinion, which ought to provide the fuel to carry American foreign policy forward. In that task of re-establishing public opinion as an independent positive force the responsibility of the President is paramount.

It is for the President to reassert his historic role as both the initiator of policy and the awakener of public opinion. It is true that only a strong, wise, and shrewd President can marshal to the support of wise policies the strength and wisdom latent in that slumbering giant—American public opinion. Yet while it is true that great men have rarely been elected President of the United States, it is upon that greatness, which is the greatness of its people personified, that the United States, from Washington to Franklin D. Roosevelt, has had to rely in the conduct of its foreign affairs. It is upon that greatness that Western Civilization must rely for its survival.

THE AMERICAN ELECTORAL SYSTEM: CONSTITUTIONAL & POLITICAL ASPECTS

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IN the United States there are, strictly speaking, no national voters and no national elections; there are only state voters and state or local elections, although some elections are nation-wide and look like national elections. This situation, sometimes forgotten even by Americans, is due, of course, to the federal system of government which divides governmental power between states and nation, which applies to suffrage and elections as well as to other matters, and which means that the control of these subjects is vested largely in the states. It should be remembered, in this connection, that there are not yet, strictly speaking, any popularly elected national officers in the United States. Members of Congress, whether of the House or Senate, are elected from the various states to represent those states, and are constitutionally considered state officers;¹ and even the President and Vice-President are chosen by Electors who are in turn state officers elected within and for each state. Consequently, there is no occasion for a national election and no need for national voters.

I. CONTROL OF SUFFRAGE

With respect to voting qualifications, there are only a few prescriptions in the United States Constitution. In the first place, in Article I the qualifications of those who may vote for members of the national House of Representatives are fixed, but not in specific terms; they are required to be the same as "for electors of the most numerous branch of the State legislature", which is merely another way of providing that

¹ This seemed to be the conclusion of Congress itself in refusing to undertake impeachment proceedings against Senator Blount in 1797, and in various election contests decided later.

each state should fix those voting qualifications. When the Senate was finally made popularly elective in 1913 by the Seventeenth Amendment, the above provision was incorporated verbatim into that Amendment, and the principle of state control over the suffrage was re-emphasized and maintained. These provisions also make it clear that there is no distinction whatever in the United States between a national voter and a state voter, and that the voting qualifications for whatever office are prescribed by the various states.

Secondly, the Fourteenth Amendment, adopted in 1868, includes the following provision: "But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein [i.e., in the House of Representatives] shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state." This provision seems at first glance to fix the suffrage qualifications for all elections as (1) male, (2) citizen, and (3) twenty-one years of age; and, while the first requirement may be considered as changed later by the Nineteenth Amendment enfranchising women, the provision has not been repealed or otherwise amended, and is therefore still legally effective.

It should be noted, however, that the Fourteenth Amendment was intended to relate particularly to the negro, just freed as a result of the Civil War and the previously adopted anti-slavery (Thirteenth) Amendment; it conferred citizenship on the negro, and it attempted, by the above statement of qualifications, to secure him the vote as well. The actual enfranchisement of the negro was by this provision left to the states, but state action was to be forced by the penalty of reduced representation in Congress if the voting qualifications were not changed accordingly. If any state chose to accept

the penalty, it might still fix voting qualifications as it pleased. In other words, the Fourteenth Amendment did not itself fix the suffrage qualifications, but merely set up standards which the states were expected to follow but need not.

Actually, as is well known, not a single state enfranchised the negro or otherwise conformed to these standard qualifications, nor has any state suffered the penalty prescribed in case of such failure. The various efforts in Congress to apply the penalty have been unsuccessful because of the threat and certainty of a Southern filibuster; but these efforts have also been half-hearted at the best, for if applied at all the penalty would have to be applied also against Northern states, such as Massachusetts, which have adopted literacy or educational tests for voting, such tests being equally outside the standard qualifications of the Fourteenth Amendment.¹ At any rate, this Amendment has become a dead letter in respect to suffrage, and has not in the least affected the principle that the suffrage is a matter for state regulation and control.

Thirdly, the Fifteenth and Nineteenth Amendments are suffrage amendments, which are generally said to have conferred the franchise on negroes and women respectively. While practically this is true, it should be pointed out that constitutionally these Amendments do not by their own terms *confer* the right to vote upon anyone, but prohibit the states from denying the suffrage to these classes. The distinction is of some importance, for, in the first place, there is again in this language a clear recognition of the general principle of state control over the suffrage, although within certain limitations here prescribed; and, secondly, the limiting language (race, colour, previous condition of servitude, sex—not negroes or women) has made it possible for the states to impose restrictions on the suffrage within the terms of the Amendments (particularly the Fifteenth) and yet effectively prevent the accomplishment of their purposes.

¹ A strict application of the penalty provisions would affect more than half the states, including more than a dozen Northern states. In some Southern states the representation in Congress should probably have been reduced by approximately one third, and in Northern states with the literacy test the reduction should undoubtedly be substantial.

In respect to negro suffrage, for example, the Southern states at an early date provided literacy tests for voting, which in themselves were clearly constitutional since not prohibited by the Fifteenth Amendment. The negroes were largely illiterate and would therefore be excluded by these tests, but there were also large groups of illiterate whites whom these tests, if properly administered, would also exclude from voting. Hence legislation was enacted in these Southern states which exempted from the literacy test any person who himself or whose ancestor could vote before 1867.¹ This "grandfather clause", as such provision came to be called, was an extremely effective device, while it lasted, to prevent negro voting, but it was found by the courts to be so directly aimed at the negro, even though put in the form of a literacy test and its application, as to violate the Fifteenth Amendment and therefore unconstitutional.²

Another method of evading the Fifteenth Amendment has been the enactment of the so-called "reasonable understanding" clause. This was again an educational qualification, requiring prospective voters to read, understand, and give a reasonable interpretation of any clause in the state or national constitution, to the satisfaction of the election judges. This test applied to all voters alike, did not in itself discriminate against the negro or come within the limitations of the Fifteenth Amendment, and has not yet been found to be unconstitutional. However, since the election judges were white, it was a regular practice for them to require white voters to read and explain one of the simpler provisions of the state or national constitution, and to be easily satisfied with

¹ This date was before the adoption of the Fourteenth and Fifteenth Amendments, and before any negroes could vote or claim the right to vote under any provisions of law or constitution.

² *Guinn v. United States* (1915), 238 U.S. 347; *Myers v. Anderson* (1915), 238 U.S. 368. There is reliable evidence that a considerable number of illiterate whites, who could vote only by claiming their descent from these pre-1867 voters, felt the stigma of being branded as "grandfather voters", refused to take the necessary oath, and did not vote; to some extent, therefore, the grandfather clauses probably were not as completely discriminatory as they were intended, and served to exclude illiterate whites as well as negroes.

the explanation given, but to require negroes to read and explain the "due process" clause of the Fourteenth Amendment itself, or some other provision which even the United States Supreme Court has not been able to explain with assurance or clarity. These "reasonable understanding" clauses have therefore tended to become discriminatory in fact, if not in law, and have become means of asserting the power of the states over suffrage, in spite of the limitations in the Constitution.¹

A third method of evading the Fifteenth Amendment has been by requiring the payment of taxes, especially the poll tax, as a prerequisite to voting, and requiring even the production of the tax receipts, sometimes for several preceding years.² Since the negroes were as a group somewhat more careless than the whites about the payment of taxes and particularly careless about preserving their tax receipts, these provisions, not discriminatory in themselves, tended to operate against the negro. However, not being expressly directed against persons of any particular race, colour, or sex, they do not appear to be within the limitations of the suffrage Amendments and have not yet been held unconstitutional.

¹ The following provisions in the Louisiana Constitution of 1921, still effective, are typical: "He [the voter] shall be of good character and shall understand the duties and obligations of citizenship under a republican form of government. He shall be able to read and write, and shall demonstrate his ability to do so when he applies for registration by making, under oath, administered by the registration officer or his deputy, written application therefor, in the English language, or his mother tongue. . . .

"Said applicant shall also be able to read any clause in this constitution, or the Constitution of the United States, and give a reasonable interpretation thereof.

"If he is not able to read and write, then he shall be entitled to register if he shall be a person of good character and reputation, attached to the principles of the Constitution of the United States and of the state of Louisiana, and shall be able to understand and give a reasonable interpretation of any section of either constitution when read to him by the registrar, and he must be well disposed to the good order and happiness of the state of Louisiana and of the United States and must understand the duties and obligations of citizenship under a republican form of government. . . ."

² In one state (Alabama) the poll taxes must have been paid since 1901, in another (Virginia) for three years preceding the election.

The poll tax, although increasingly ineffective as a bar to negro voting as the negro has become better educated in these governmental processes, has somehow become a symbol of racial discrimination in respect to voting. As such, its maintenance has been vigorously condemned, not only by liberals generally, but specifically by the President's Committee on Civil Rights, and by the President himself;¹ and its abandonment as a voting qualification has been demanded by both the Republicans and the Democrats in their national platforms.² In Congress there have been strenuous efforts to carry out these pledges, and the House of Representatives has, on five separate occasions beginning with the 77th Congress (1942), passed bills to abolish the poll tax as a voting qualification, the last time on July 26, 1949, by a vote of 273-116. On each previous occasion these bills have failed in the Senate, not because of a hostile majority but because a filibuster has prevented them from coming to a vote, and this will certainly happen again in the present Congress.

The furore over the poll tax may seem surprising and unnecessary, since there are only a few states that still maintain

¹ "Under the Constitution, the right of all properly qualified citizens to vote is beyond question. Yet the exercise of this right is still subject to interference. . . . Requirements for the payment of poll taxes also interfere with the right to vote. There are still seven States which, by their constitutions, place this barrier between their citizens and the ballot box. The American people would welcome volunteer action on the part of these States to remove this barrier. Nevertheless, I believe the Congress should enact measures insuring that the right to vote in elections for Federal officers shall not be contingent upon the payment of taxes." Message of President Truman to Congress, Feb. 2, 1948.

² *Republican* (1948): "We favour the abolition of the poll tax as a requisite to voting." *Democratic* (1948): "The Democratic Party is responsible for the great civil rights gains made in recent years in eliminating unfair and illegal discrimination based on race, creed or colour. The Democratic Party commits itself to continuing its efforts to eradicate all racial, religious and economic discrimination. We again state our belief that racial and religious minorities must have the right to live, the right to work, the right to vote, the full and equal protection of the laws, on the basis of equality with all citizens as guaranteed by the Constitution. We highly commend President Harry S. Truman for his courageous stand on the issue of civil rights. We call upon the Congress to support our President in guaranteeing these basic and fundamental American Principles: (1) the right of full and equal political participation; (2) . . ."

this voting qualification, the tax involved is trivial, and even the Southern states seem disposed to abandon this requirement in due time.¹ The attempts at national action have been carefully confined to so-called national (that is, Congressional and Presidential), not state elections, but even so the Southerners might seem to have the better of the constitutional argument, in their insistence on the right of the states to regulate the suffrage within the broad limitations of the national Constitution. In fact, the Republicans, naturally the strongest advocates of national action,² practically conceded the argument in 1944, when they advocated in their national platform, not a federal statute abolishing the poll tax, but the submission of a constitutional amendment.

In the 80th Congress, Senator Wayne Morse of Oregon, who undertook the principal constitutional argument on behalf of those who favoured the federal anti-poll tax bill, also conceded the reasonableness of the opposition argument, and made his own case on the argument that poll tax restrictions on the suffrage "did not conform to the historic theory that was in the minds of the founding fathers . . .", an argument that ignored the property, religious, and other qualifications that seriously restricted the suffrage in 1787, qualifications of which the Founding Fathers were well aware and which they

¹ There are seven Southern states that still (1949) maintain the poll tax requirement for voting: Alabama, Arkansas, Mississippi, South Carolina, Tennessee, Texas, Virginia; it seems not so well known that there are also five New England states that still associate the poll tax with voting, although not as a general or absolute requirement: Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

During recent years the poll tax qualification has been abolished in four Southern states: North Carolina, Florida, Louisiana, Georgia; in Tennessee the legislature voted its abolition, but the state supreme court held the measure unconstitutional; in Virginia a constitutional amendment is pending; and in Texas the legislature in 1949 voted to submit the question to a popular referendum. Southern liberals, such as Senator Lister Hill of Alabama, strongly advocate repeal of the poll tax, but insist that it be done by state action.

² However, the Republicans vigorously opposed national control in the Federal Soldiers' Voting Law enacted in 1943, arguing interference with the right of the states to control the suffrage; they feared that the Democratic Administration would make soldier voting too easy and that these absentee soldiers would vote heavily Democratic, which happened.

did not challenge when the Constitution was written.

Senator Morse also argued, somewhat more cogently, that the poll tax is not a voting qualification at all within the meaning of the Constitution, "no more a true qualification to determine a prospective voter's inherent ability, understanding, or capacity to exercise the high privilege of citizenship involved in voting than would a requirement that the prospective voter be baldheaded, or stand six feet tall in his stocking feet, or have a net annual income of \$10,000,000. . . . The origin of the poll tax, and the way in which it has operated, shows only too clearly that it is not, and was not intended to be a *bona fide* qualification. Its intended purpose, and its intended result, was to eliminate or greatly restrict a particular element of the citizenry from the use of the free ballot."¹ It is possible to sympathize fully with this point of view, to feel keenly that these poll tax restrictions are relics of a by-gone age, and yet to conclude that the power to deal with the matter is, under the American Constitution, reserved to the states.

Finally, in this review of the constitutional problems involved in the suffrage, mention should be made of the white primary. The United States Constitution takes no express notice whatever of political parties or of *nominations* to public office, but only of *elections*, and hence it was for years the constitutional rule that the political parties and their operations were entirely within the jurisdiction of the states. In the Southern states, where the Democratic Party was dominant, the Democratic nomination was equivalent to election, and consequently in these one-party states the primary became more important than the election. Southerners therefore hit upon the device of the white primary—that is, they provided by statute or by party rule that only white voters might participate in the Democratic primary, thus barring the negro from effective political participation. This method of dis-

¹ The gist of the constitutional argument, including the above argument by Senator Morse, is found in *Congressional Record*, 80th Cong., 2nd Sess., Aug. 3, 1948, pp. 9816-9857. A study of the operation of the poll tax requirements in Texas shows that in that state the requirement was not applied in a discriminatory manner nor was it important as a restriction on the negro.

franchisement spread to all eleven Southern states, and was thought for some time to be fool-proof against constitutional attack, but that proved not to be the case. In a series of decisions over a period of twenty years (1927-1948), the United States Supreme Court first held such white primary laws to be contrary to the Fourteenth Amendment as a denial to the negro of the "equal protection of the laws"; then took the position that nothing could be done about such discrimination if by the political party itself and not by the state, since the Fourteenth Amendment applies only to the states; but finally concluded that the political party is, after all, engaged in a public function in the nomination of public officials, and therefore cannot discriminate against the negro.

The Court has thus "administered the judicial *coup de grâce* to the white primary",¹ and has, by so much, limited the power of the states to regulate the franchise at their own pleasure under all circumstances. Even so, the power of the states to determine the franchise, not only in state and local elections, but even in elections for national purposes, is such that a well-known writer on American government was able to repeat in 1946 what he first stated in 1919: "They (the states) could, if they so desired, provide that no one may vote at a presidential or congressional election [and, of course, at a state election] unless he is able to recite the Declaration of Independence, or sing the high notes in the Star Spangled Banner, or go through the manual of arms."

The result is that voting qualifications are not necessarily uniform throughout the United States, but may vary from state to state. Actually, they do vary to some extent, not only in respect to the special qualifications reviewed above, but also in respect to others. Property qualifications are still required in a half dozen states, although only for special purposes, such as voting on bond issues, and are alternatives to other qualifications, such as literacy, in four additional states. The residence requirements vary from six months in

¹ *Nixon v. Herndon* (1927), 273 U.S. 536; *Nixon v. Condon* (1932), 286 U.S. 73; *Grovey v. Townsend* (1935), 295 U.S. 45; *Smith v. Allwright* (1944), 321 U.S. 649; *Rice v. Elmore* (1948), 333 U.S. 875.

some states to two years in others, with similar variations for local areas. United States citizenship, which until a few years ago was not required in several states, is now a uniform requirement in all the states, but the period of citizenship varies from its mere possession in most states to five years in one state. Even the age of twenty-one, almost universally deemed the appropriate minimum age for voting, was in 1943 reduced to eighteen in the state of Georgia. This lack of uniformity, this succession of difficult and disturbing constitutional problems, this heated debate over the civil and political rights of minorities, are part of the price which American citizens must pay for the federal system of government which they still wish to maintain.

II. CONTROL OF ELECTIONS

With respect to the conduct and control of elections, there is again a division of power between states and nation fairly clearly specified in the national Constitution. In the first place, elections for state and local office are not mentioned at all in that instrument and are therefore subject exclusively to the control of the several states. The times of election, the offices to be filled, the form of the ballot, the voting procedures, and all the other election details, are for those offices determined completely by each state for itself, and may vary from state to state. In fact, there is a great deal of variation:¹ although most states hold their general state elections on the same day in November in even-numbered years (which day has therefore come to be known in the United States as the General Election Day), two states hold theirs in other months (Louisiana in April, Maine in September), and three in odd-numbered years (Kentucky, Mississippi, Virginia); the primary elections drag on in the different states from April

¹ In Illinois, for example, the election calendar shows five separate elections: (1) on the first Tuesday after the first Monday in November (the General Election Day)—Presidential, Congressional, state, and county offices; (2) first Tuesday in April—certain city, village and township offices; (3) second Saturday in April—school offices; (4) third Tuesday in April—other city and village offices; (5) first Monday in June—judicial offices. At least three primary elections must also be held to nominate candidates for these elections.

to October in election years; in spite of the General Election Day, most states hold separate elections for some local and special purposes, but the time and number of these several elections vary considerably; in about twenty-five states a single ballot is provided at the general election, which is so large and inclusive as to be called a blanket ballot,¹ while in other states separate ballots are used (up to eight in Vermont) for constitutional amendments and other propositions, for judicial offices, for local offices, for Presidential Electors, and so on; there are other variations too numerous to mention in this paper. The system is so involved that adequate description becomes almost impossible without a detailed examination of its operation within each state.

Secondly, the "times, places, and manner" of holding Congressional elections were made subject (by Article I, section 4) to regulation within each state by the state legislature, but with the provision that "the Congress may at any time by law make or alter such regulations".² Until 1842 the Congressional elections were left entirely to the states, with the result that the method of choosing members of Congress was not uniform throughout the United States, but in that year Congress enacted a statute requiring that Representatives be uniformly chosen by single-member districts, a system that has been maintained ever since. It should be noted, however, that this district system cannot be made effective without supplementary state action, since the district lines must actually be determined by the respective state legislatures. Occasionally these legislatures have failed to carry out their part, a notable example being in Illinois, where for nearly forty years (1911-1947) the legislature refused to re-district the state

¹ In Indiana in 1932, this meant a ballot more than 2,000 square inches in size, including 319 names for 54 offices, and two propositions, while in Pennsylvania in that year the ballot contained 44 names for 11 offices. The Chicago primary ballot in 1934 was described as one which would "qualify as a bed sheet in Texas, where hotels are required by law to provide such covering in ample size."

² Originally an exception to this Congressional power was made "as to the places of choosing Senators", which related to the election of Senators by the state legislatures but which became obsolete with the change to popular election in 1913.

according to the Congressional Reapportionment Acts, and the resulting inequalities of representation in that state became almost a scandal until finally corrected.

In 1871 Congress provided for federal supervision of Congressional elections, a measure intended particularly to protect the newly-enfranchised negro from interference by the Southern states, but this measure has seldom been used;¹ and in the same year Congress also required the use of paper ballots in such Congressional elections, later (1899) authorizing also the use of voting machines. In 1872, the time of these elections was fixed for the first Tuesday after the first Monday in November in even-numbered years, which uniform day required for Congressional elections persuaded virtually all the states to fix their state elections on the same day in order to save inconvenience and expense—and thus was established our so-called General Election Day.² These acts were all applied to United States Senators following the change to popular election in 1913.

The power of Congress to regulate Congressional elections in the above manner is clear, has not been seriously challenged, and has generally been exercised with due regard for the rights of the states. There has been serious challenge, however, and a good deal of difficulty, as new problems have arisen whose sensible solution seemed to require national action. Confronted with the problem of discrimination in respect to the franchise, President Truman, in his message recommending federal action against the poll tax, expressly disclaimed any intention to have further federal regulation of elections. "I wish to make it clear", he said, "that the enactment of the measures I have recommended will in no sense result in Federal conduct of elections. They are designed to give

¹ This was the third in a series of so-called Force Acts, enacted by Congress to enforce the results of the Civil War and Reconstruction in the South; the first two were declared unconstitutional.

² Maine continues, as the single exception, to elect members of Congress in September in connection with its state elections, under a special provision enacted by Congress in 1875. It is this September election that makes Maine a kind of political barometer, particularly in Presidential years; all states, including Maine, must hold Presidential elections in November, that being required by Congress since 1845.

qualified citizens Federal protection of their right to vote. The actual conduct of elections, as always, will remain the responsibility of State governments." The anti-poll tax bills could, however, be constitutionally justified only if they regulated the "manner" of an election, and not if they determined suffrage qualifications. The bills were, therefore, ingeniously written to make them fit the area of Congressional power, if not their real purpose.¹ This is a device frequently used in other fields of governmental activity, is probably necessary in a system with a Constitution otherwise too rigid for adaptation to modern situations, and in this instance fully supported by weighty opinion.² The question of what is an appropriate election regulation, within the meaning of the Constitution, has become, on the whole, as much a political as a constitutional problem, and is likely to be settled on a political basis.

Another persistent problem not formally recognized by the Constitution is that of the political party and its operations. The close relation of nomination to election was long since understood by the state courts, and the states had relatively little difficulty in regulating party methods as a part of the election process. The result was a mass of legislation dealing with the organization of the political party, the methods of nomination, and the financing of political campaigns. The lack of uniformity in this legislation and its incomplete

¹ Partial text of anti-Poll Tax Bill passed by House of Representatives in 1947:

"Be it enacted, etc., That the requirement that a poll tax be paid as a prerequisite to voting or registering to vote at primaries or other elections for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, is not and shall not be deemed a qualification of voters or electors voting or registering to vote at primaries or other elections for said officers, within the meaning of the Constitution, but is and shall be deemed an interference with the manner of holding primaries and other elections for said national officers and a tax upon the right or privilege of voting for said national officers. . ."

² The passage by five successive Houses of an anti-poll tax bill is impressive argument with respect to constitutionality; the Senate Committee on the Judiciary has on each occasion recommended passage after careful examination of the constitutional argument; and the Attorney General on the last occasion gave a formal opinion that the bill was constitutional.

character in many states, made national legislation seem imperative, and Congress, in 1907 and 1910, enacted statutes regulating the sources and amounts of money that might be spent in Congressional campaigns. These regulations applied expressly to elections, and were therefore accepted as within the power of Congress to regulate the "manner" of such Congressional elections; but in 1911 Congress extended these regulations to party primaries or to campaigns for nomination as well, and in so doing went beyond the letter of the Constitution. The United States Supreme Court, approximately fifty years behind the state courts in its views, held in 1921 that a primary is not an election, and that therefore the power of Congress to regulate elections could not be extended to cover nominations; but twenty years later the Supreme Court reversed itself and now held that primaries or nominations are a part of the election process.¹ Meanwhile Congress had conformed to the Newberry decision of 1921 by enacting in 1925 the Federal Corrupt Practices Act, which again carefully confined its regulations to election campaigns only; and the Congressional primaries are as yet unregulated by national statute.

Finally, there are the Presidential elections, which, although involving genuinely national officers, are even less under the control of the national government than are Congressional elections. This grows out of the fact that a "Presidential election", as that term is used in the United States, is not constitutionally an election of President and Vice President at all, but only of Presidential Electors. These Electors are apportioned among the different states according to the representation in Congress and are chosen within each state, "in such manner as the legislature thereof may direct". A Presidential election is therefore actually a series of state elections, all held on the same day, and subject to regulation by each state. Congress is given power only to "determine the time of choosing the Electors, and the day on which they shall give their votes"; and accordingly Congress has

¹ *Newberry v. United States* (1921), 256 U.S. 232; *United States v. Classic* (1941), 313 U.S. 299.

from time to time fixed various convenient dates for these procedures,¹ with the result that the election of President Truman was not constitutionally certain until January 6, 1949, although everybody considered him elected, and rightly so, on the evening of November 2, 1948.

In other words, only the formal operations of the Electoral College² are subject to regulation by Congress, while the substantial and realistic features of Presidential selection are under state control. The power of the respective state legislatures to determine the method of choosing the Presidential Electors, and thereby to determine the actual method of Presidential selection, is without any exceptions or reservations and so complete that any legislature might, it has been aptly said, "vest the appointment of Electors in a board of bank directors, a turnpike corporation, or a synagogue". In fact, the state legislatures, quickly sensing the general desire for more popular participation in this process than was intended by the Founding Fathers, exercised their power in such a way as to make the Presidency increasingly subject to popular control.

This was done, first, by providing for popular election of the Electors, a method which has been uniform in all the states since 1864. Secondly, the nomination of Electors by the various political parties was encouraged and subjected to statutory regulation, and in such a way as virtually to require the winning Electors to vote for the Presidential nominees of their party. Thirdly, the ballot has been ingeniously devised in the different states to enable the voter in some way to vote directly for President and Vice-President, and to have his vote count constitutionally as a vote for the appropriate Presidential Electors.³ In other words, it has

¹The present requirements are as follows: (1) *election of Electors*—first Tuesday after the first Monday in November, the General Election Day (since 1845); (2) *voting by Electors*—first Monday after the second Wednesday in December (since 1934); (3) *counting of vote and declaration of result by Congress*—January 6 (since 1934).

² This is the term regularly used, even in the statutes, for the entire group of Electors, but actually these Electors meet only in their respective states, and hence a more accurate term would be "Electoral Colleges".

³ See S. D. Albright, *The American Ballot* (1942), esp. ch. 5.

been possible by such state legislation, varying in detail but all to the same general purpose, to retain the indirect, unpopular system of the Electoral College provided in the national Constitution, and yet make that system over into one which is virtually popular and direct. Nothing better illustrates the American genius for institutional development within the limits of a rigid Constitution difficult to change.

There are still some important limitations in respect to this democratization of Presidential selection. The election of the Electors as a group within each state, instead of by districts, results in an electoral vote for the various candidates generally out of proportion to the popular vote, and sometimes even in the election of "minority Presidents", that is, Presidents who have won a constitutional majority in the Electoral College but less than a majority of the popular vote.¹ This can be changed by state legislation, but the "at large" system appears to be fixed by tradition and likely to continue unless corrected by constitutional amendment.²

The most important limitation, however, relates to the method of Presidential nomination. The present National Convention system has grown up outside of the law, is uncontrolled by national statute, and probably cannot be so controlled. Various states have established the so-called Presidential primary, under which delegates pledged to particular Presidential candidates are chosen by the party rank and file for the respective party Conventions, and in some cases the party voters may even express their preferences directly for Presidential nominees. Some progress toward democratization and popular control of the final nominating process has been made by this device, but its usefulness

¹ Woodrow Wilson in 1912 won 82% of the Electors but only 42% of the popular vote; and President Truman was re-elected in 1948 with about 57% of the electoral vote but only about 49% of the popular vote. The winning President in 1876 (Hayes) and 1888 (Harrison) did not even have the highest popular vote. For table of such minority Presidents, see J. M. Mathews & C. A. Berdahl, *Documents and Readings in American Government* (rev. ed., 1940), pp. 225-226.

² The constitutional amendment now under serious consideration in Congress would, if adopted, abolish the Electoral College and give to each state an electoral vote in exact proportion to the popular vote.

is impaired by the fact that it is a state primary, is at present in effect in less than half the states (seventeen in 1948), varies in important detail in those states that have it, and may have only slight influence on the Convention.¹ A national Presidential primary was recommended by President Wilson in 1913, and various proposals for such a national primary, whether by statute or by constitutional amendment, have been made during these years, but nothing has come of them. A national statute would almost certainly be constitutionally impossible, and a constitutional amendment appears practically improbable. For some time to come the control of this matter seems likely to remain in the states, and the complete democratization of Presidential selection must await the impetus that comes only gradually with the years.²

There are numerous problems relating to suffrage and elections in the United States that cannot be examined in this paper, but it should be sufficiently clear that the system is extremely complex, and perhaps unnecessarily so. Much of the complexity is due to the federal system of government, with the uncertainties and clashes of jurisdiction that make more than ordinarily difficult an appropriate adaptation to modern situations. Some of the complexity is also due, however, to the strong feeling for popular election as a form of democracy, so that the elective offices have become so numerous, elections so frequent, and the ballot so lengthy as to make the task of the voter an almost impossible one. Americans often envy the British voter, with few elections, few offices to fill, few candidates from whom to choose, and no constitutional problems whatever!

¹ The best analysis of these problems, although out of date in respect to details, is Louise Overacker, *The Presidential Primary* (1926).

² A somewhat detailed analysis of the trend towards democratization has been made by the present writer, in a recent article, "Presidential Selection and Democratic Government", *Journal of Politics*, vol. 11, pp. 14-41 (Feb. 1949).

AN AMERICAN ELECTION CAMPAIGN

by ESTES KEFAUVER

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THE Presidential campaign in the United States, coming at quadrennial intervals and bringing into play all the elements of party organization and strategy, may be taken as typical of an American election campaign.

Before the campaign begins, several preliminary steps have been taken. First, both major political parties have activated their machinery, which consists of a hierarchy of precinct, county, state, and national committees. This hierarchy is shaped like a pyramid with the national committee at the apex and the mass of party members, grouped in local precincts, at the base. Primary laws in the several states define party, prescribe the conditions of membership, and describe the composition, selection, and functions of state and local committees. But the parties are not subject to federal regulation.

Second, both parties have held a national convention late in June of the Presidential year, at which they have elected a national committee, adopted a platform, and selected their candidates for President and Vice-President. The national committee consists of a man and a woman from each of the states, territories, and insular possessions. The chairman of the national committee is chosen by the party's Presidential candidate, manages his campaign, and directs the activities of the entire party organization. The party platform is a long document which surveys the whole field of national politics, sets forth party policy in general terms on many public questions, and seeks to harmonize group and sectional interests. Contest for the Presidential nomination is often bitter and many ballots may be taken before the winner emerges with a majority of the delegates' votes. John W. Davis won the Democratic nomination in

1924 on the 102nd ballot; Thomas E. Dewey received the Republican nomination in 1948 on the third ballot.

During July and the first half of August the parties perfect their organization, commence the collection of funds, lay down the main lines of party strategy, and set up their headquarters: the Republicans usually in Chicago and the Democrats in New York. The campaign actually opens in the middle of August when the Presidential candidates deliver their speeches of acceptance, although Franklin D. Roosevelt delivered his speeches right after the national convention adjourned. In his acceptance speech the candidate puts flesh on the dry bones of the platform, stressing this plank and soft-pedalling that, and perhaps committing himself and the party upon some issue which the convention has overlooked or ignored.

Methods of campaigning vary. Some candidates have assumed active direction of the enterprise; others have let the national chairman run the show. Theodore Roosevelt and Calvin Coolidge dictated their own campaign strategy; Mark Hanna ran the McKinley campaigns, while Franklin D. Roosevelt relied at first upon his chairman, James A. Farley, who won renown as a skilful chief of staff. As a rule, the chairman commands the undertaking; he confers, to be sure, with the candidate and the executive committee; he requests and takes advice from many quarters; from elder statesmen and party committee-men at all levels whose counsel may avoid some factional imbroglio and help to co-ordinate state and local efforts with the national enterprise; he must have a rare combination of tact, judgment, and executive ability; but in the end he really runs the campaign, selects the issues to be stressed, marshals and manoeuvres his political forces, and plans the higher strategy.

Traditionally, management of the campaign has been centred in the national headquarters. But in 1932 responsibility for the Democratic campaign was decentralized among the state committees, whose chairmen held strategy meetings at national headquarters where a rotating system of visiting counsellors was set up—experiments which achieved notable

success. Chairman Farley established a super-intelligence service at the centre and kept in close contact with state and local leaders from Maine to California. Under his leadership the Democratic organization achieved a degree of efficiency and perfection unprecedented in American politics.

Publicity is the chief weapon in the political arsenal. All the arts of salesmanship are utilized to publicize the candidate and platform: speeches, radio broadcasts, slogans, newspapers, billboard advertising, pamphlet literature, campaign textbooks, etc. The candidate himself may conduct a "front-porch" campaign or a "swing around the circle". The "front-porch" type of campaign was conducted by McKinley at Canton, Wilson at Shadow Lawn, and Harding at Marion; while Bryan, Hughes, Cox, F. D. Roosevelt, Landon, Willkie, Dewey and Truman resorted to the "swing around the circle". The front porch campaign has many advantages; the candidate preserves his dignity and his physical well-being; his speeches are prepared with deliberation and so escape incoherence and mere repetition; the newspapers, receiving advance copies, print them in full. On the other hand, the swing around the circle—a method of campaigning which began with Bryan in 1896—with hundreds of speeches from the rear platform of a train, gives millions of people a chance to see the candidate in flesh and blood, hear the actual tones of his voice, and become acquainted with his personality. But the advantages of this method tend to peter out as the candidate succumbs to the long strain, his speeches degenerate in quality, and the correspondents find little fresh copy in the improvisations of a tired mind. A President seeking re-election may hold himself aloof from partisan controversy and ignore his opponent, as Wilson ignored Hughes in 1916 and as Coolidge ignored Davis in 1924; or he may conduct a stump tour, as President Roosevelt did in 1936.

Speech-making is not, of course, confined to the candidates. All the party committees—national, Congressional, state, and local—send thousands of speakers to flood the country with a deluge of campaign oratory. It echoes from sound-wagons on street corners, reverberates at mass meetings in

packed city auditoriums, and penetrates millions of private homes via the radio waves. First used in 1924, the radio has become a major means of publicizing the proceedings of the conventions, the speeches of acceptance, and campaign oratory. More than a million dollars is spent for radio time by the two parties. Now the candidate addresses two audiences—the smaller one face to face, and the millions outside through the microphone. With his superb radio voice, Franklin D. Roosevelt made extensive use of this device at mass meetings and intimate fireside chats from the White House. On the other hand, radio has widened the range of the demagogue and exposed the incredible burlesque of convention proceedings to public ridicule.

The newspapers are the most effective medium of campaign publicity. Most of them identify themselves with one or the other of the major parties and support its cause throughout the campaign with slanted news and editorials. Others, usually independent, take sides because the candidate or his policies attract them. The press bureau at party headquarters keeps the press supplied with advance copies of the candidate's speeches, with "canned" cartoons and editorials, and with cast plates for the rural newspapers. The campaign utilizes all the media of modern advertising, including billboard posters, newspaper and magazine advertisements, and motion pictures.

First effectively used in 1916, billboard posters reminded the country that President Wilson "has kept us out of war". Four years later the Republicans gave currency to the slogan, "Let us be done with wiggling and wabbling". Other slogans that linger in political memory include "Keep Cool with Coolidge", "Happy Days are Here Again", "The New Deal", "Roosevelt and Recovery", "Time for a Change", "Had Enough?", and "The Fair Deal". Hundreds of thousands of dollars are spent in campaign years upon these appeals to popular psychology. Experts in applied psychology are hired to censor campaign publicity and to advise in the "building-up" process of creating a popular illusion of the candidate and his qualities.

While the newspapers and the radio are the chief weapons of publicity, a vast volume of pamphlet literature is also put out, centering upon the main issues of the campaign and the career of the Presidential candidate. This technique is said to have originated with the Anti-Corn Law League which flooded England with millions of economic tracts. Adoption of prohibition in the United States owed much to the use of this method by the Anti-Saloon League which inundated the nation with car-loads of literature. Both great parties have long set great store upon the widespread distribution of millions of copies of the candidate's portrait, his acceptance speech, and pamphlets on current issues varying in size from four to eighty pages or more. During the campaign of 1896, for example, 275 different pamphlets and leaflets were circulated and printed in ten languages. Although not actually delivered in Congress, many of them are reprinted from insertions in the *Congressional Record* and sent free through the mails under the frank of a Congressman.

The most interesting publication of the national committee is the campaign text-book, a volume of four or five hundred pages for the use of party workers and journalists. Herein you will find the biographies of the candidates, their speeches of acceptance, the party platforms in parallel columns, and the party record upon all major controversial questions.

As the campaign progresses, party managers pay particular attention to special groups of voters and to the doubtful states. In an industrial society like the United States, characterized by the division of labour and specialization of function, the electorate is composed of interest groups organized along occupational lines rather than of individuals. There is the farm bloc, the labour bloc, the business bloc, the veterans bloc, the Negroes, the Catholics, and so on. The attitudes of these influential groups must be borne in mind in the selection of the candidates and the framing of the platforms, for they represent large segments of the electorate. Missionary work for the conversion of these important groups—economic, racial, religious, sectional—requires the right kind of gospel and suitable missionaries. Speakers must keep diverse sectional

interests and attitudes in mind; tariff protection in the manufacturing East; cotton and racial prejudice in the deep South; isolationism in the Middle West; flood control in the Mississippi valley; irrigation and reclamation in the Far West; silver and wool in the Mountain States. It was President Truman's special appeals to the labour and farm vote that won his unexpected victory in 1948.

Doubtful states also require special attention. No serious contest is made in those areas, like the "solid South", where one party or the other definitely predominates. In 1948, however, four Southern States deserted the Democratic Party and cast their electoral votes for the candidate of the Dixiecrats in protest against President Truman's civil rights programme. Doubtful states with large blocs of votes in the Electoral College—such as New York, Pennsylvania, Ohio, and California—become the focus of campaign activity. From them the candidates are chosen; for them the issues are defined; in them the political troops are concentrated.

The various means of publicity—advertising, radio broadcasting, printing and distributing literature—involve heavy expenditure. The total outlay by party committees at all levels in a Presidential campaign is unknown, but the sum is huge. It has been estimated that the campaign funds of the major parties aggregated at least \$28.5 million in 1936, or 67 cents for every vote cast in the election. In the six national elections from 1920 to 1940, inclusive, the Republicans had the larger fund, although they were defeated in half of them.

Party campaign funds are derived from various sources: from the assessment of office-holders under the guise of "voluntary" gifts; from contributions by the grateful beneficiaries of various forms of public subsidy; in the form of gifts from organized labour which made generous contributions to New Deal exchequers; as well as levies on big business which for many decades has shown a preference for the Republican cause. Now that large donations are condemned as a possible cause of governmental corruption, reliance is placed upon small sums from the party membership. In 1940, for example, the Republicans received 39,169 individual

contributions and the Democrats 37,998. Party deficits are common, especially on the Democratic side, and are met by such ingenious devices as the Jackson Day dinners at \$5 to \$100 a plate, the sale of the *Book of the Democratic Convention* which yielded rich returns, and generous cheques from wealthy party "angels".

Campaign financing in the United States is subject to federal regulation. The Hatch Act (1939) limits aggregate individual gifts on behalf of a candidate for federal office to \$5,000. This limitation, however, does not affect gifts to state and local committees or prevent evasion by splitting a large gift among various members of one family group. The Hatch Act, as amended (1940), also limits receipts or expenditures of any political committee to \$3 million during any calendar year. The law requires the national committee to make a fairly rigid accounting of its financial transactions in a sworn and itemized public statement. Political activity on the part of the administrative employees of the federal government is prohibited. Under the Civil Service Act of 1883 a federal employee cannot solicit from or pay to another such employee any political contribution, and no one may solicit such a contribution on federal premises. And the Federal Corrupt Practices Act forbids all corporations from making gifts "in connection with any election" for Presidential Electors, Senators, or Representatives.

As election day approaches, scrutiny of the political barometer becomes the chief national pastime. Party managers on both sides put forth extravagant forecasts of victory, checking their public optimism meanwhile against confidential reports from precinct committees all over the country. In recent years the Gallup, Fortune, and Roper organizations have conducted weekly surveys of public opinion throughout the course of Presidential campaigns, the results of which are published in the form of election forecasts in the newspapers of the nation. These forecasts are based upon the views of a small representative sample of the population. During the early decades of the century the *Literary Digest* poll enjoyed high prestige until its abysmal failure in 1936.

The accuracy of the modern "scientific" polls has been repeatedly demonstrated on the basis of election returns. The American Institute of Public Opinion has made over 120 election predictions in the last decade and its average error has been less than 3 per cent. However, this margin of error was sufficient in the close election of 1948 to account for its failure to predict Mr. Truman's triumph. Opinion about the merits of this innovation varies in the United States. Some hail it as the answer to one of democracy's great needs—that of determining quickly and accurately what people are thinking. Others condemn it as an instrument that undermines our theory of representative government, tending to make representatives into rubber stamps for the wishes of the people as revealed through the polls.

How valuable, in the last analysis, is an American election campaign? Does it educate the electorate in the great issues of the day, diverting their attention for a period from petty personal to public affairs? Do the best men always win? Or, as Lord Bryce once said, are great men never elected President? Does the campaign stress civic virtue and civic responsibility? Or, as the critics claim, is it a colossal travesty, a calculated attempt to asphyxiate the masses with the poison gas of propaganda? Does the great debate enlighten or bewilder the people? Are the results worth the tremendous expenditure of money and effort?

As a firm believer in representative government, I have faith in the electoral process. Certainly, elections are an inescapable feature of our democratic form of government. As one who has six times submitted himself to the suffrage of the people in the State of Tennessee, and participated in many election campaigns, I believe that they have great social value as a means of popular education on public affairs and of evoking a sense of civic responsibility. I deplore, however, the arrangements by which certain minority elements in the United States are disfranchised and the widespread apathy of the electorate. Only about 50 per cent. of our adult citizens bother to vote in Presidential elections.

POLITICIANS, PARTIES, AND
PRESSURE GROUPS

by T. V. SMITH

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THE politician is to the average honest man an unexpected human type. His essential attribute seems to be a genius for dispute. At any rate, like the lawyer, he is always at it, though without the lawyer's decorum therein. But then the lawyer's task is easy as compared to that of the politician: the lawyer disputes within rules that can contain and do adjudicate the issues; the politician's disputes are outside the rules, and indeed are frequently about the rules themselves. A rule that truly could contain the disputes *over* rules themselves would represent, however, a level of abstraction better suited to end rather than to begin a discussion of politics.

After all demurring, it is nevertheless admitted that the politician is more raucous than the lawyer, and in America at least that is going a long way. From the fact that the politician is always disputing, arises another imputed characteristic, essential to his role though not primary in his character: that he is a chronic compromiser, demanding one thing, in the name of Justice; accepting another thing, in the name of—well, of what? If we must answer that question at once, our answer would itself be “compromised”, for the answer at this stage would have to be “expediency”. That is a derogatory word, at least until it is well sampled. That sampling we proceed to facilitate by now investing expediency with amplitude. Even philosophy, according to the Pollock-Holmes correspondence, must rely on background to distinguish it from gossip.

Let us take a look around before we focus upon the politician as a human type. Conflict is indigenous to the political enterprise. He is not prepared to enter the discussion

who does not admit that equally honest and equally intelligent men may be in profound controversy, without any way out that is mutually satisfactory. Nor is this elemental matter of conflict simple; it is indeed so complex that it involves moral principles as well as economic interests. All three elements of our discussion derive their significance from this central fact of a conflict which is complex and multi-dimensional: the *politician* is called into being by it, the *parties* are defined by it, the *pressure groups* are justified by it. After an immediate remark upon the politician, we shall proceed to observe in order that the role of the political party is to organize and administer the "principles" involved in the conflict; that the role of the pressure groups is to articulate and implement the "interests". But, first, the role of his Honour, the Politician!

I. POLITICIANS

Politics we may best conceive, then, as the art of fruitful dispute. To be fully fruitful, disputation must end, and must end short of the liquidation of the losing side. Since the only way between equally honest partisans of circumventing this disastrous goal is to compromise, politics is in its very nature a disputing that ends in compromise, or seems to end. Politics is, with Reinhold Niebuhr, "proximate solutions of insoluble problems". The politician is personification of both dispute and compromise, because he is heir to and custodian of the process itself—and that in free lands by popular election.

The defence of politics most required is moral, for its necessity arises from a fundamental disturbance of the consciences of free men. Consider this simple fact: that not all consciences deliver the same dicta. It was on the basis of this diversity of deliverance, let us recall, that Thomas Hobbes founded his notorious defence of totalitarianism for seventeenth century England. Since equally honest men do differ in their convictions as to what is right and since honest men are nerved by their convictions to act out their consciences, freedom of conscience implies disturbance of public order,

and if not checked eventuates in public disorder. Excessive order, then, becomes necessary in order to prevent defective order. Hobbes was right, as against the moralists and theologians of his and succeeding generations, in what he mainly contended. He contended that variety is indigenous, even as to the dictates of conscience, and so that wide initial freedom for the individual requires all but complete tyranny over him for the sake of society. Hobbes was right, I repeat, as matters stood in his generation, and he remains right until men learn to separate the inner and the outer with a clear conception of the division of privilege that must obtain as between them.

Hobbes can be shown wrong only when men accept not merely as a fact but also as an imperative that conscience practise much less than it preaches. If citizens feel that they are privileged neatly and directly to proceed to act upon (that is, to *enact*) every dictum of conscience, then it is as clear to me as to Hobbes that they cannot be allowed freedom of conscience. Such freedom carries duties; and the first of the duties of a free conscience is to delay action until conciliation (on each and every prompting of rectitude) can be arranged between the conflicting dicta of different consciences. Conscience must learn to treasure reticencies no less than urgencies.

This moral fault which fathers democratic politics is stated with full pathos at the very close of the most sustained attempt of post-Hobbesian British philosophy to deal with it, on the last pages of Henry Sidgwick's monumental *Methods of Ethics*. Sidgwick is forced to observe that equally legitimate *methods* of equally "Christian" consciences end at times in prescribing contradictory duties. He closes his book with only a half-hopeful hypothesis rather than with any ringing declaration of faith in the political potential of autonomous conscience. Hobbes was more clear and more bold; he had complete faith in conscience *after it has been politicized*. Moreover, he had the courage to "politicize" it, and then to declare the simple truth that "law is the public conscience". Hobbes was right in his diagnosis, so far as his fanatical age let him understand the issue.

In a democratic society certainly the law is the *public* conscience, i.e., it is the summarized maximum of all that private consciences can agree to enforce. But this maximum for enforcement is only a modicum of what these same consciences separately propose as morally right: the law being clearly in defect here, as clearly in excess there. In truth, the citizen whose thought does not go beyond the law in grasping for what is ideally right, and even the citizen whose action stays merely within the law, is not in either case the ideal citizen. The man who thinks the law is as good as it ought to be, is himself not as good as he ought to be. But the man who is as good as he ought to be will not inflict his goodness upon another.

This plethora of the private over the public embodiment of the ideal requires careful handling if it is not to render the practical fanatical and to make the moral useless. To insist in action upon a private view of the excellent is precisely what we mean by fanaticism. "The fanatic is", as the American wisecrack runs, "only the man who does what God would do, *if* God had all the facts." [Adolf Hitler's trouble was not lack of ideals but impetuosity about ideals that had not been disciplined through confrontation with other ideals. Said General Guderian, at Nürnberg, by way of apologizing for abject surrender to Hitler's "intuitions": "He hypnotized his entourage. He had a special picture of the world. . . . But, in fact, it was a picture of another world."] Conscience that is esoteric can be as pernicious as the lack of conscience altogether.

On the other hand, the exoteric (i.e., the "law") can become, as Hobbes said, "the public conscience" without the Hobbesian infringement of "private conscience" only when men keep their private consciences private, or make them public only through the consent of other equally propulsive private consciences. Now there is a quickly reached limit on the extent to which all private consciences can become publicly effective: that limit is found in the fact that they do differ and that they do diverge even to the point of cancelling one another out (or, worse still, of liquidating one

another). Until men grow wise enough to see this radical fault in their frames, and honest enough to admit it, they cannot sustain its correction, or even abide its articulation. To abide this radical truth is the first, as to sustain its discipline is the last, mark of a civilized man. To take all this in one's stride requires enormous discipline. And the first agent of this discipline is the political party.

II. PARTIES

It is only in utopias that there are no political parties. Indeed, to the simplest soul the cessation of politics would spell utopia. If, however, with Justice Holmes, we treasure the simplicity which "lies beyond the complex", we must inquire how men get over the shock and the frustration of discovering that honest and intelligent men are sometimes locked in lethal conflict, from which "neither will run when beaten". It is a fact that in no age of mankind have all good men been agreed on goodness, all just men on justice, or even all holy men on holiness. It is an old story—and a sad one, but one with a moral.

The moral is that since partisan purposes are inevitable, it is better to be conscious of them, to admit them, and strategically to contain them. If all this be possible, it constitutes good news. It is indeed the gospel of democracy. Political parties are great achievements, for they are the instrumentalities of this good news. They rise above "interests" to the generality of "principle" simply because it is impossible to get enough members to make a national party without cutting across lines of economic and other interests. Do we not all deserve justice?—assuming, you see, that the term means something which unites us, over and above the private views of justice, which certainly do divide us.

Principles are of a higher order of abstraction than interests; and the fundamental assumption of most citizens is that if we could see our conflicts with adequate perspective (certainly if we could see them, as the philosopher says, *sub specie aeternitatis*), we would discern that the conflicts have disappeared, and all is properly contained—"discord,

harmony not understood": not only of a higher order of abstraction but also and consequently of a larger spread. If we do not assume this enlarged coverage by ideals, we break up, as in Italy before Mussolini, as in France intermittently, into so many parties that the number is commensurate with and tends to become co-extensive with the interests that are in conflict. If we can surmount this, we survive the plurality of interests and, in transcending them, we may come to contain them.

The complaint is constantly made in America by self-proclaimed "liberals" that our two parties represent nothing, are shams, "alike as peas in a pod". The complaint is substantially true, but not for that reason justified. Lucky rather than unlucky is the fact charged. The interests are so large and so diverse in America that were there not some way to effect partial unification of the differences before the final unification required for national action, there would be little possibility of achieving a national policy through agreement.

Look at the Democratic Party! Why, it is made up of such diverse and laughably contradictory interests that after getting together under common symbols for a united campaign, a Democrat can meet and almost stomach with relish a Republican, by way of relief! Nor is it different with the Republican Party, nor with a Republican when he meets a Democrat in Congress! Unity of legislation *across* party lines in Washington is possible because of the discipline necessary in order to have achieved and to maintain unity *within* party lines. The great and final gulf can be bridged because the separation has been breached by many a footpath above and below the party gorge where the public looks to see dramatic compromise. Accommodation between the parties becomes possible and practicable because each party is already a compromise-unity. Discipline learned piecemeal operates to facilitate unity wholesale.

It is frequently asked why in America we do not have honest party differences, as for instance between the Labour and the Conservative Parties in Great Britain. Assuming

both facts implied, for the sake of the argument, let us further the foregoing view of our political realities by giving one reason why we cannot well proceed as far along the line of interest-demarkation as is assumed for Great Britain. We do not have, in the sense that England has, a professional group to guarantee continuity of the great and continuing services of government, a group to cushion the change of policy from one extreme to another. Since when in America we change we tend to change the personnel as well as the policy, the policy itself must not be too sharply veered if there is to be continuity in indispensable things. So we accommodate ourselves to our own situation by not really indulging greatly differing policies.

Whether that is the whole story may be doubted; but it is a part of the story, and a not unsymptomatic part. I have spoken, however, as though there were distinct principles involved in such policy changes as we allow ourselves. There *are* different emphases as between the parties. But principles are sufficiently roomy that under ideals differently named we may still face the same general direction. Political principles are, as has been said, already compromised by each party to the point that, by meaning something to all party members, they mean little to each member save the glow of a generality somehow shared by all. Party platforms are conscious exemplifications of this wholesome art of strategic obfuscation.

We are, in a pinch, all Democrats, we are all Republicans. Are we not all for Justice, for instance? That is a big, vague ideal that holds us all together in its amplitude. Under that, all Democrats are kept united by a middle-sized principle which emphasizes that equality of opportunity is necessary to ensure the largest returns of justice. Under that, all Republicans are kept together by a middle-sized principle which emphasizes that group mediation is required for prosperity, and if mediation, why not by going concerns that are already prosperous? These are vague approaches to the same from the different: significant enough to let each party feel itself an honest instrument of abstract Justice,

never growing concrete enough to wreck either party's tenuous intra-party cohesion. Any third party can, after an outside canter or two, find room in one of the historic groupings, unless it really wishes to change the over-rules of the game. Then it requires discipline. The two parties themselves have become the final agencies to discipline citizens away from the notion that what to private conscience is clear and full of rectitude, can for that reason pass neatly to its implementation. Together, our two historic parties discipline citizens into acceptance of diverse and conflicting interests as both inevitable and honourable.

III. PRESSURE GROUPS

It is the business of pressure groups to carry this matter of discipline a stage farther: to show, that is, that what is inevitable and honourable is also desirable. It is food and drink and shelter and sex that make the world go round. These are symbolic centres of concrete demands. They also must be counted in, lest men plant themselves squarely in the mid-air of some idealistic exquisiteness: monasticism instead of the crassness of marriage; pacifism instead of the crudity of patriotism; virgin birth of all necessary institutions rather than the painful bi-partisanship of gradualism. Humanity has large and lovely seed-beds of lust and fulfilment.

When men organize themselves around what they live *on* (rather than what they live *for*), they are keeping their lives safely close to the ground. We are all alike children of Antaeus. It is necessary and honourable that differences be obscured by principle for the sake of unity; but it is also desirable that the unity which politics enshrines and the parties embody should be concrete in nature and full of succulence. Before pressure groups are reprobated, which they at times justly invite, they should be celebrated for the indispensable role they actually play. But for the pressure, men would not know where solid earth is, and but for the pressures of extremes no representative would be dependably able to locate the middle course, since the mean is relative to the extremes.

Pressure groups in America perform the function which, in lands that fragmentize their political loyalties, would be performed by a political party. Where, as in America, political parties represent an accommodation of many interests rather than an affirmation of one, we take care of the interests (1) by recognizing their legitimacy, (2) by acknowledging their right to their own representatives (lobbyists), and (3) by turning to good account as articulate components of every great compromise interests which the several pressure groups obtrude through their lobbyists. This two party-method of containing the interests which the pressure groups serve has this enormous advantage over the multi-party fragmentation of other lands: it is harder for any one group to get its way and it is harder for all together intentionally or accidentally to precipitate an impasse in governance. Pressure groups are all heard and harkened to, as is appropriate in determining public policy; but each is challenged for its ethical credentials when as a part it tries to speak for the whole. Only the party can try that, and only the parties can bring it off.

These considerations were all tied together in America by the political maturity prevailing at the prime: that is, by the assumptions by key founders of the republic (see final statement of it by Madison in *Federalist* No. 10): that (1) men live by bread, all men (not even the poor can be condemned to cake); that (2) no men live by bread alone (there must be principles available as well as interests predominant); and that (3) principles in conflict can be resolved only by distinguishing between thought (in which anything goes all the time, with or without reason) *and* action (in which no privacy of conscience, however sacrosanct, avails aught until consensus can be won by concessions being granted). "Certitude is never the test of certainty."

What the American Bill of Rights really means is that the final ideal, dominant over all interests and predominant among all principles, comes to this: *that persons are more important than any principle*. Abstractions are not to be invoked against persons until, and then because of, such involvement

between persons as threatens to result in damage to one or both or all. No such involvement need occur over ideals among men who are civilized enough to see that what men merely think is nobody's business, and that even as to what men say (in Jefferson's colourful terms) "it does me no injury for my neighbour to say there are twenty gods, or no God. It neither picks my pocket or breaks my leg". Principles must, however, be invoked at the threshold of action, for the sake of all concerned. Even here, *what* principle and *how far to be pressed*, must be a matter of majority agreement.

What James Madison fully saw, and clearly said, in defence of the Constitution is that diversity of opinion and of articulation must be sweepingly allowed, and that diversity of action must be generously if circumspectly allowed, all because liberty produces diversity as its fairest love-child. To cure the "disease" of difference would be, then, to destroy our richest potential. So we must not deal, says Madison, with the cause, but only with the effects. We deal with the effects by accepting as good what flows from liberty, whether we like it personally or not; and of limiting that acceptance only in the name of liberty itself.

Such integrated understanding of our system in America, yields us our politicians as moral middle-men for matter seriously in dispute; it discovers our political parties as schoolmasters to bring us to tolerance of diversified groups and conflicting interests; and, finally, it discloses our pressure groups to us as guarantee that our parties become not merely platitudinous and as insurance that while our heads are in the skies (of principle), our feet remain upon the solid ground (of interest). Our politicians procure us unity-in-difference through parties of general principles, and bequeath us differences-in-unity through honouring the plural commitments of our different sovereign selves.

THE AMERICAN PARTY SYSTEM

by CHARLES E. MERRIAM

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THE American party system presents many difficulties in analysis and appraisal. At the outset allow me to acknowledge my indebtedness to the comments of that great statesman-scholar, James Bryce, in his *The American Commonwealth* (1888) and his personal counselling of a young student.¹

The American party system is not contained in any written document. Party is not even mentioned in the Constitution, and seldom is the word found in state constitutions or in federal or state statutes, except those dealing with the regulation of nominations and the conduct of elections.

Many systems

There are indeed forty-nine party systems—one federal and forty-eight state, not to mention the many systems of cities and other localities. There are 155,000 governing bodies and there are around one million elective officials. There is no central party organization with power to issue orders to all the others, to discipline them, on the federal scale at least to “purge” them, to direct the formulation of their party platforms, or the conduct of their party representatives in their conventions or in their behaviour in office. It is often not observed that local city elections are and have been for many years largely non-partisan in character, combining and re-combining groups of many kinds.

The party system is a combination of systems, national, state and local, loosely bound together, and it might seem to some incapable of coherent and sustained action on what is now called a party line. Yet the party is singularly efficient on occasion. The party is in fact built upon custom rather than

¹ The American party system has been fully discussed by such writers as Key, Odegard, Gosnell, Holcombe, Herring.

upon laws and judicial decisions. It presupposes a set of attitudes, ways of behaving, which cannot be prescribed by law. It depends upon what we once called *mores* or customs, now rechristened under the name of culture patterns, under which much may be placed—socio-, economic, political, psychological patterns. Our American parties are not always coherent, or consistent, and to some may seem at times hypocritical. They rely on what one British prophet called “illogical moderation”. On many occasions confidence in the partisanship of his followers may convince a leader that that he can “elect a yellow dog” on his ticket, but he may awake to the reality of an “upset”. One-third of the voters are one way and one-third another and the other third are more or less independent. Thus President Truman triumphed over the bookmakers in 1948, but found that he must have difficulties with his voters and their representatives.

Yet can it be said that this division is peculiar to the American party system, or that inconsistency is never found in the fibre of “high-minded” individuals in other fields than the political?

Formal framework of parties

But while the party system is determined in the main by custom, there are some boundaries of structure within which the system operates. These are (1) the Separation of Powers, (2) the Power of the President, (3) the Federal System.

It was not by accident but by design that the Constitution-makers provided a Presidential system in which strong powers were vested in the Chief Executive, such as foreign affairs, defence, appointment, veto, freedom from Congressional choice. The Electoral College was substituted for Congress, and while Congress kept the choice in its hands for a generation, in the end the party system emerged as the preferred means. Thus Presidential leadership under the Constitution has had and now has a vital relationship to the nature and workings of the American party. The desire to make the vote for President count directly has had a strong deterrent effect upon new parties of a permanent type.

Next is the influence of the federal system of government. In the range of forty-nine governments with very large independent authority there is room for a party to find a point of influence and experiment with its plans in so far as they are within the scope of constitutional action. If a party wins, it does not possess by any means complete power but is blocked at one point or another. It never wins all or loses all. Within the same party one group may have radical control of one state and another element may have conservative control of yet another.

The separation of powers into legislative, executive, and judicial prevents the full control of governmental policy or administration by any one branch of the government. The legislative body, unless it has a two-thirds majority, cannot force through legislation distasteful to the President, but on the other hand, by the simple device of withholding appropriations in whole or in part, may affect important aspects of political action.

Beyond these factors is the force of Public Opinion, the real ruler when its voice is clearly heard.

Nominations

A unique feature of the American party system is the legal regulation of nominating methods—primaries and conventions. This is a very long story, however, which I cannot discuss on this occasion.¹

This system which has many variations in the states provides a method of holding a party election either by direct choice or by delegates to conventions in which candidates are chosen for the following election. In what are called "one party" states (uniformly one way or the other) this nomination is equivalent to an election, as in some of the strongly Democratic states. In some jurisdictions individuals may be candidates in both parties and win a double nomination.

The national system runs through a number of variations too numerous to discuss here, but ending in a delegate convention of over a thousand members, in which the party

¹ See my *American Party System*.

platform is adopted and candidates for President and Vice-President are chosen. This may seem like pandemonium to the observer who does not know just what to observe, but there is high politics going on behind the turmoil and the shouting and apparent confusion.¹

Recent changes

In recent years many social changes have affected the party system. Among these are a shift in the strength of voting groups. The size of the electorate has been increased by the addition of women to voting lists and to political activity; by the addition of negroes in considerable numbers and by their migration to Northern industrial centres in large numbers and their shift from the Republican to the Democratic Party; by the decline in European immigration; by interstate migration. Again, the growth of organized labour has been very remarkable, and their non-party attitude of the late nineteenth century has been changed to one of active participation in political elections. The agricultural group, traditionally dominant, has lost in voting strength (relatively) but has very greatly strengthened its organized action, in part because of its weakness. Economic concentration has continued but the influence of organized business has not increased correspondingly. Note eight years of Theodore Roosevelt; eight years of Wilson; thirteen years of Franklin D. Roosevelt in a period of forty years. Professional groups have become much more politically conscious, especially the American Medical Association and the teachers and to some extent scientists. Regional groups have seen the increased power of urban centres and the shift in numbers to the West and South-West, notably California and Texas. Church groups, in very early days all-powerful, have shown some signs of greater political interest and have taken on a new view of social responsibility in all denominations.

In recent years the spoils system and the machines have retreated in nation, states and cities. Both patronage and racketeering of various types have been pushed to the rear by

¹ For party leadership and the social composition of parties see my *American Party System*, chap. V, VI, VII.

aggressive public sentiment. Sixteen million urban dwellers now operate under the city manager plan, many vigorous mayors have expressed the rising sentiment of citizens, vigorous governors have taken office, along with some weak ones. It is much too much to say that graft has come to an end, but it is accurate to point out that there has been a notable decline in the influence of such practices on party organization and operations.

The patronage system, for many years an important influence in political parties, has been materially changed, especially in the federal service, but also in state and cities by the introduction of the merit system and the career service.¹ At the same time there has been increased interest in managerial efficiency on all levels, and an increase in the number of top flight officials available for service. The recent report of the Hoover Commission, with the joint approval of President Truman and ex-President Hoover, is a striking example of this trend. It provides the ways and means through which administrative efficiency in the federal service may be very materially improved.²

There are also important changes and proposals in legislative processes and procedures, both in Congress and the several states, and variations in party caucus, policy committees, and the filibuster which cannot be considered here, however important. There are also proposals by various groups for reorganization of party leadership in the form of party councils, but thus far without significant influence.

Another trend is reflected in the organization of the office of the President with services affecting personnel, budgeting, planning, the Council of Economic Advisers, and in like agencies in many states and cities.

Another significant change is the spread of social legislation and security measures providing forms of relief which formerly were largely, but of course by no means wholly, in

¹ See current reports of the Civil Service Assembly, an association of civil service commissioners throughout the country, and their periodical, *Public Personnel Review*.

² See *Public Administration Review*; also reports of the Public Administration Clearing House (Chicago, Ill.).

the hands of the party workers. Forms of insurance and other organized relief are now doing systematically what was done, sympathetically no doubt, by the party agents, particularly in the urban centres. Of course the function of the party worker as a source of political information and an intermediary between the government and the citizen still continues.

But what of large social and political issues of fundamental importance? What bearing have they on the American party system?

Basic political party battles are not new since the battles led by Jefferson, Jackson, Lincoln in their days, and by the Roosevelts and Wilson in another day, with parades, demonstration, and hullabaloo galore. The politics of many of these struggles was better than their administration, and that was the function of the parties in the main. Party discussions at times were models of showmanship and statesmanship in difficult political situations, helping to clarify and crystallize public opinion on policy or personalities. Yet many a time "illogical moderation" was an ingredient, without which the operation of a government would have been extremely difficult. This rests basically on a form of confidence in the judgment of the electors—an expectation that the minority might transform itself into a majority, given patience and persistence with freedom of the press and of association.

The future

But what is coming in the American party system? As an observer, participant, student of theory and practice for some sixty years, I leave the dogmatic answer to the licensed prophets who assume to have a divine revelation. In my own days I have seen the Populists, the Gold Democrats and the Silver Republicans, the Farmer-Labourites, three Progressive parties, headed by Roosevelt, LaFollette, and Wallace, the Socialists led by the genial Norman Thomas, the Prohibitionists, the Communists, the Dixiecrats, and many other minor minors.¹

Presumably in so large a territorial area as the United States there might be regional parties, but this has not often

¹ See Merriam and Gosnell, *American Party System*, chap. XXII, "The Future of Parties".

happened. Western radicals were sometimes called the wild jackasses of the West, and a group of Dixiecrats appeared in the last election, but most of them came back under the tent before too long. All parties may be labelled as the tools of Wall Street. The labour group might conceivably become a permanent independent labour party, or might try again as the earlier Farmer-Labour party. But most Americans do not take kindly to any permanent class divisions.¹ Economic, social, and territorial mobility has not favoured rigid stratification of groups. There are practically no advocates of a one-party system, which is generally regarded as not a party system at all, but as a camouflage. There are few advocates of a multi-party system with or without proportional representation. There are some proponents of a parliamentary system as contrasted with a Presidential system, but their number is not large. Likewise, no group cares to be known as either conservative or radical or liberal either, or to enter into a grouping which would openly leave out either labour or agriculture or business. However, we are in a rapidly changing world and predictions of what may emerge in the near future are, rash indeed.

The political party is now hard-pressed by other groups competing for public interest and favour. Other associations are carrying on much the same functions as the party and are attracting the interest, the enthusiasm, and the support of many citizens who remain indifferent to the demands of active partisan work. If the party is to maintain a position of leadership in the community and perform its high function of implementing the consent of the governed, it will be necessary to alter materially the methods which have often been followed and to adopt others more in keeping with the spirit of the new time.² After all a party is not a fundamental end of man or of government, but a useful tool when properly employed for practical purposes in subordination to larger political and social ends.

¹ See Lasswell, *Politics*, p. 173.

² *Ibid.*

SOME ASPECTS OF THE AMERICAN PARTY BATTLE

by CORTEZ A. M. EWING

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IN the hundred and sixty years since the first election under the Constitution, American politics has evolved into a definitive system which defies many of the accepted criteria for the evaluation of political systems. From the atmosphere of the eighteenth century natural-rights' revolt against strong government, it has moved, always hesitantly, and with exuberant professions to the contrary, across the political field to the restfulness of the interventionist state. Modern followers of the magnificent Jefferson sing paeans to his foresight, quote and misquote from his timeless rhetoric, and proceed immediately to the polls and vote for a party whose record leaves no doubt of its intentions to bring the good life through governmental intervention. We have, then, with considerable hypocrisy, moved from the rationalism and agrarian convictions of our forefathers into the politics of the industrial state, about which we know very little and are only recently seeking to understand with any serious intentions.

We have been able to make this transition, with easy conscience, largely on account of the accidental development of the non-ideological party system. Even with some evidence to the contrary, existing chiefly in the writings of John Adams and Alexander Hamilton, the United States emerged as almost unanimously opposed to monarchy and the strong state. The two parties which developed in the last decade of the eighteenth century appealed, then, to the citizens on the issue of which could better protect the country from the twin threats of monarchy and governmental tyranny. As new issues developed, the parties themselves became great popular movements comprising members from all positions on the

ideological spectrum. The slavery issue offers a splendid illustration of this feature. Both Democratic and Whig parties had anti-slavery and pro-slavery members. The great conventions of each party struggled over the issue and made the necessary compromises. For thirty years, the slavery issue was handled by each of the two great parties as an internal problem. And it was not until the Democratic party, in 1860, was no longer able to achieve its programmatic compromise that the issue was thrown, with all trappings removed, to the electorate for its decision.

The inability to compromise the slavery issue, with its attendant economic considerations, left only the choice of appeal to intelligence or to arms. For better or worse, the country took the latter course. But once the issue was settled—not by law but by raw violence—formal politics re-emerged in all of its traditional reliance upon the non-ideological formula. High tariff exponents were to be found in each party, as were those who favoured direct election of Senators, “soft” money, workmen’s compensation, anti-trust legislation, and other issues which filled the party platforms at the turn of the century and after. The present Republicans are generally regarded as the conservative party, but Southern Democrats, allied with Northern liberal and labour forces, are generally much farther to the right than their Republican opponents. And since 1938, the informal coalition of Republican and die-hard Southern Democratic Congressmen has constituted the dominant force in our national law-making body.

In the last Presidential campaign (1948), a voter, if he had had to rely upon the formal promises of the two major parties, would have had great difficulty in choosing between Republican and Democratic allegiance. As is customary practice, the platforms were pieced together with the avowed purpose of alienating the fewest possible number of voters. It is axiomatic in America that, either directly or through implication, every programme promises decrease in taxes! It only need be noted, without intending to detract from his incomparable contributions to American political stability,

that Franklin Delano Roosevelt stated in 1932 that taxes could be reduced twenty-five per cent under a wise administration, which he promised to organize if given that mandate. That he more than doubled the national budget of his predecessor was viewed as evidence of culpability only by his Republican opponents who, under comparable circumstances, would no doubt have followed a similar course had they won the election.

Though filled with contradictions, the non-ideological system has one great merit. It makes for slow but easy progress, and without violence, if such may be said of a political system which produced four years of devastating war over the slavery issue. However, the system can scarcely be blamed for not finding the solution, for the solution was present and was not put into practice because a minority section, as attested by the electoral returns, refused to permit the implementation of that democratic decision. By acquiescence in majority decision, the slavery issue could well have passed into the limbo of mere history through constitutional and legislative alterations.

The American party system operates on the presumption that there is general agreement upon fundamental political principles as between the two large parties. It is not, as under the Marxist (or Hegelian) dialectic, that a policy produces its antithesis, that the operation of a free-enterprise system inevitably gives life and substance to its socialist counterpart. Rather, the strength of the opposition derives in the day-by-day criticism of the party in power, and in the consequent conviction among great *blocs* of votes that the Government is, by its policies, definitely depriving them of anticipated returns from the economic order. Thus, in 1932, the "barefoot boys of Wall Street" attack upon the Republicans successfully symbolized the common man's reaction to the charge that the Republicans had become a party which gave primary considerations to the interests of the money power. No pretensions by Mr. Hoover and his apologists could stem the tide of erstwhile Republicans across to the Democratic standard.

The Rooseveltian New Dealers proceeded apace to

ostentatious display of interest in the social welfare of the common man. And though conditions were portrayed as bad—the expected result of Republican mis-rule!—emphasis was placed upon the conspicuous non-discrimination among the nation's people. It was a political masterstroke. For though the Republicans wept bitter tears for sixteen years over impending national insolvency, the dangerous development of dictatorial Presidential power, the debilitation of the American character through the loss of individual initiative under the new paternalism, and the unwarranted destruction of the traditional constitutional distribution of powers, the citizenry displayed a stern resistance to these envisioned threats to the national welfare.

There is another aspect of the party system. American parties are coalitions of interest groups. The successful party leadership, therefore, is that which can enlist under its banner a sufficient number of those groups to achieve and retain power for the party. These coalitions are usually pieced together by opposition leaders. Governments find it difficult to satisfy all those who elected them to office. For the Government leaders, there exists the constant threat of group rebellion. For the opposition's leaders, there exists the possibility of being able to construct a coalition sufficiently strong to defeat the majority party in the next election. There is much smugness in America, which has ascended into scholarly ranks, to dismiss coalition governments of the multi-party states as too unstable to perform the true function of a political system. Except for the "government by the calendar" feature, they are not much different from our own. Coalitions in America are created before the election, while those in multi-party countries are usually formed after the personnel of the parliament has been determined.

Once a coalition is effected in America, the probability is that it will be able to weather the political storm for more than a decade. The Republicans remained constantly in power from 1861 to 1885; the Democrats had made the mistake of becoming identified with support for slavery and for rebellion. Despite a major economic depression, the

Republicans might well have continued but for a revolt in farmer and labour ranks. Agricultural radicalism featured the period from 1880 to 1896. Pursuing their earlier course of staunch individualism and states' rights, the Democrats were unable to satisfy the demands of agricultural radicalism and, thereby, missed the opportunity to establish national hegemony for successive administrations. As a result, for twenty years the Democrats and Republicans fought an inconclusive battle. Finally, in 1893, the Democrats had the misfortune of being in power during a major economic depression. Thereafter, for forty years, they could never convince the public that they were not "bad for business". The "full dinner-pail" argument was conclusive even in labour ranks. Indeed, the two electoral triumphs by Woodrow Wilson derived essentially in the inability of the Republicans to compromise the ideological differences over finance capitalism. R. M. LaFollette was the true father, but Theodore Roosevelt led the liberal "Bull Moose" Republicans against the conservative "Stand Pat" wing of William Howard Taft and Senator Aldrich. By 1918, the Republicans had satisfied most of their dissident labour and agricultural groups. Thereafter, they won three national and six successive Congressional elections.

The dominant Republicans might well have continued in power if they had noted with more sympathy the social effects of the new industrialism. Profits and production, rather than employment and standard of living, became the sacred words of the Republican catechism. Even though the unemployment figures were in excess of two million through most of the twenties, the Republican leaders refused to acknowledge this fact as more than an unfortunate, but inevitable, decree of natural economic law. Steadily increasing capital investment and rising prices to them more than offset the difficulties of readjustment which accompanied the development of a new super-industrialism. This callous policy produced millions of forgotten men who were not subscribing capital for new enterprises nor computing daily their paper profits on stock speculation.

Here was the material out of which Franklin Delano

Roosevelt and his strategists organized the spectacular Democratic party of our era. With the Southern Democrats as a nucleus, they brought in organized labour, most agricultural groups (especially those in the hinterland), Northern negroes, recent immigrants (especially Jews, Italians, and French Canadians), and most small business, which had come to regard the Republicans as essentially a Wall Street protection agency. The New Deal programme was designed to placate these varied and sometimes conflicting interests. On many occasions the coalition appeared to be cracking up, but the immaculate political resourcefulness of Mr. Roosevelt beat off the threats. Even after his untimely passing, the coalition has continued, but with increasing evidence of internecine difficulty.

Some scholars note a cyclical factor in the operation of the American party system, yet there are so many contradictions to be explained away as to produce obscurity in the basic principle. Certainly, economic depressions constitute a major threat to party hegemony. The Republicans survived those of 1873 and 1908, but they lost power after the debacle of 1929. The Democrats went into the political wilderness following the 1893 crisis. It is quite possible that no party will be able to survive a deep depression in our times, as the conspicuous individual insecurity under a highly industrialized economic order would tend to drive sufficiently large groups to the opposition, and especially if the opposition were promising some manner of basic relief. On the other hand, it is unlikely that unemployed workers would follow an opposition programme which promised no immediate improvement. But, since the techniques of public assistance are now well established and generally approved, it is doubtful if any administration will wallow through economic crisis without some definite government programme for individual relief. Mr. Hoover's 1932 explanation of his Administration's difficulties as deriving in the world-wide economic crisis may well be proved the historic obituary of American *laissez-faireism*.

A third aspect of our party system is the role of minor or splinter parties. The splinters represent the attempt to infuse

ideological factors into the system. Without exception, they are reform groups, and in that role they bring a *raison d'être* to our politics. Their greatest function is that of educating the electorate. For the past century, all of our important political reforms have come from the sometimes fanatical efforts of splinter parties. The Anti-Masonic party in the twenties and thirties of last century launched a successful attack upon the undemocratic practices of the legislative caucus in the nomination of party candidates. The ground work for the Emancipation Proclamation (1863) and the Thirteenth Amendment to the Constitution (1865) destroying the institution of slavery, was performed by the Barnburners and Liberty party members twenty years earlier. The Whig party was destroyed because it refused to acknowledge this anti-slavery opinion, and the new Republican party came to almost immediate electoral success when the Democrats were likewise hesitant.

Following the Civil War, agricultural revolt, featured by Granger, Greenback, and Populist movements, paved the way for the adoption of anti-trust legislation, direct election of Senators, and, by some states, of the newer institutions of direct democracy—the popular initiative, the referendum, and the recall. The “noble experiment”—Prohibition—came directly from the efforts of the Prohibition party and the Anti-Saloon League. The Progressives of 1912 educated the country to the need for governmental regulation of industry, and the Clayton Act (1913), the Federal Trade Commission Act (1914), and the long list of similar laws may well be attributed primarily to the preachments of LaFollette and others of his ilk.

Since 1872, more than fifty splinter parties have appeared upon the national political scene. Many of their platform principles have found their way into the programmes of one or both of the great parties. When this occurs, the splinter party simply vanishes from the scene. But, in addition to the educative function, minor parties also have substantially affected the outcome of national elections by securing voter support which would otherwise have gone to the great parties.

From 1876 to 1896, none of the five successful Presidential candidacies represented a majority decision of the electorate. In both 1912 and 1916, Woodrow Wilson secured less than a popular majority, and the same was true for Mr. Harry Truman in 1948. In the last eighteen Presidential elections, seven were plurality rather than majority decisions in popular voting.

A fourth important aspect of the party system is that of sectionalism. Originating in the classic North-South division of colonial times, the frontier process has produced new sections, each with its own political habits and convictions. In analytical studies, I have utilized a five-section classification. They are the North, South, Border, Middle West, and West. The North comprises New England, New York, New Jersey, and Pennsylvania (138 electoral votes); the South contains the eleven secession states and Oklahoma (137); the Border is that group of five states lying just above the Old South (45); the Middle West stretches from Ohio to the Missouri River and from Canada to the Border states (118); and the West includes the other fifteen states (93).

In political allegiance, the North has been dominantly Republican since the Civil War, though the growth of industrialism, with the increase in urban population, has steadily increased Democratic strength. From 1860 to 1928, the Democrats secured a majority of the section's vote only in 1912, when the Republicans split their strength by offering two Presidential candidates. However, the Roosevelt New Deal captured the section in 1932 and 1936. Since then, the parties have battled on fairly equal terms, with New York, Massachusetts, and Rhode Island as the leading centres of Democratic strength. On the other hand, Vermont exhibits an unbroken record of Republican supremacy, while Pennsylvania and Maine have been only slightly less consistent.

The South is completely Democratic. Only in 1920 and 1928 have the Republicans enjoyed any success in dissipating the "Solid South". Some of the hill sections of Tennessee and North Carolina remain outside the stream of Southern tradition and persist in Republican allegiance. Likewise, the

transplanted Kansans in the Northern fringe of Oklahoma are generally able to send a Republican representative to Congress. But the Southern pattern, barring internal disagreement as in 1948, is that of universal Democratic preponderance.

The Border states all have slavery traditions, though they refused to follow the South in secession. Yet, in pre-Civil War politics they generally supported the cause of the South. The foundation of their politics is, therefore, Democratic, and in normal years they contribute consistent majorities to that party. However, the fabric of Republican organization is strong and, even less than states farther North, they are not readily susceptible to landslide elections. Only pockets of industrial activity exist in the section, so the traditional *mores* of agrarian politics generally obtain. Landslide elections are phenomena of recent American history and derive essentially from industrial factors.

Like the East, the Middle West was, before 1932, a predominant Republican section, though the local Democratic organization had more strength than in the states to the East. Ohio, Indiana, and Illinois were close states, with a disposition to vote Democratic in years of national Republican indisposition. Since 1932, they have remained close states, even though the remainder of the country has shifted perceptibly to Democratic favour. In the other four states—Michigan, Wisconsin, Minnesota, and Iowa—the Republicans found little Democratic opposition, though the emergence in the past forty years of sprawling industrial centres, like Detroit, Milwaukee, and the Twin Cities, has done much to alter the situation more favourably for the Democrats.

As the youngest section, the West is colonial-minded. Comprising the high plains, the mineral empire, and the Pacific littoral, it is, except in the latter, a sparsely settled region. Live stock, wheat, and lumber are its most important products. Its essential needs are for reclamation and irrigation, the sizable costs for which can conceivably come only from the national treasury. Consequently, the section has, for a half century, displayed vacillation in its political allegiance. With an astounding clairvoyance, even better than the modern

political pollsters, it pre-judged the outcome of national elections. In five elections, from 1920 to 1936, not a single Western electoral vote was cast for a losing Presidential candidate.

If the Republicans win a Presidential election, they must literally sweep the East and the Middle West, with strong support from the West. If the Republicans can win two Border states, it practically guarantees a landslide victory in the Electoral College. However, if the Border persists in its traditional Democratic leanings, it precludes the possibility of sweeping Republican victory. For control of the House of Representatives, a similar situation exists, even though the representation here is by individual constituencies and not by state units. For Democratic House control, the party must win at least forty-five per cent of the East's seats and forty per cent of the Middle West. Since 1932, this has not been overly-difficult, as the emergence of the industrial sections, with their strong pro-Democratic labour vote, has resulted in large Democratic Congressional delegations from such populous states as New York, Pennsylvania, and Massachusetts. Similar conditions exist in the Middle West, though the section is more agrarian than is the East. It is, therefore, a little less susceptible to Democratic victory trends. However, in 1948, the failure of the Republicans to satisfy the Middle West's farmer demands for crop parity and protection of co-operatives led to spectacular Democratic victories in Illinois, Iowa, Minnesota, Ohio, and Wisconsin. This unexpected development may well lead to the complete reorganization of the Republican party for, throughout its ninety-five year existence, it has consistently framed its policy so as to retain its agrarian nucleus in the East and Middle West. The Middle West's agricultural revolt is, therefore, of fundamental importance to the party.

AMERICAN POLITICAL PARTIES

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THE political party, said Edmund Burke, is "a body of men united for promoting the national interest upon some particular principle upon which they are agreed." However accurate this classical definition of the party may have been for eighteenth century England—and its accuracy even here may be questioned—it is wildly inapplicable to the American political party. In so far as any definition is possible, the American political party may be said to be a body of men (and since the nineteenth Amendment of women) organized to get control of the machinery of government. It is not necessary that they be united upon some principle or even agreed upon some general programme. It would be difficult to find any single important policy upon which either of the major political parties have been consistent for any length of time.

It is not clear just when the modern political party emerged in America. There were groups and factions with some resemblance to later parties even before Independence, and John Adams mentions, in his Diary, a "caulker's club" which gave its name to the caucus of later years. These groups crystallized as "patriots" and "loyalists" at the time of the Revolution. Factions closely approximating parties, but lacking both organization and a nation-wide basis, emerged in the debate over ratification of the Constitution as Federalists and anti-Federalists. Not until Washington's second Administration, however, did modern parties clearly emerge. The division that appeared here was along lines that were to be familiar in the future: a division between those who wanted a strong central government, and wanted to use government to advance national economic interests, and who thought in terms of commerce, manufacturing and banking, and those

who distrusted a strong central government, put their faith in the machinery of state governments, and were primarily interested in agriculture. The first called themselves Federalists—a name taken from the title of the series of essays by Hamilton, Madison and Jay advocating the ratification of the Constitution; the second used the name Republican, then Republican-Democratic. The titular leader of the Federalists was Washington himself, the actual leader was Hamilton; the leader of the Republicans was Thomas Jefferson.

As long as Washington remained in the Presidency, party divisions were held in abeyance, for Washington deeply distrusted parties and solemnly warned against them in his Farewell Address; he tried, not without some success, to maintain what would now be called a coalition government. The Presidential campaign of 1796, however, was fought along party lines. The Federalist party—the party of the “wise, the rich, and the well-born”—presented itself as the champion of conservative business interests of the country and the peculiar guardian of the Constitution; the Republican party represented chiefly the small farmers, and championed decentralization of the government. There was, too, even this early, something of a sectional alignment: the strength of the Federalist party was largely in New England and in the tidewater areas of the South; the Republican party found its strength generally in the middle states and the Piedmont South, and along the frontiers.

The election of 1796 was the last that the Federalists were to win. By 1801 Jefferson was in the White House, and thereafter his party—which came gradually to be called the Democratic—dominated the political scene for over half a century; Federalists, though they boasted such great names as Hamilton, John Adams and Marshall, declined sharply in strength. The reasons for that decline, and for the eventual disappearance of the party, are clear enough. First the party was essentially aristocratic, and no aristocratic party could prosper in a society as democratic as the American. Second, the party never built a sound organization, but depended rather upon its talents and leadership. Third, Federalist

advocacy of war with France, with consequent high taxes, plus the enactment of the ill-advised Alien and Sedition Laws, antagonized large elements of the population. The Federalists experienced a brief period of strength at the time of the Jeffersonian Embargo (1807-09) and again during the unpopular war of 1812, but the successful conclusion of that war restored confidence in the Republican-Democratic party, and after 1815 the Federalists quietly disappeared from the political scene.

The Republican-Democratic party was thus left in undisputed control of the political arena. This party—which for convenience we may now call the Democratic—is in many respects the most remarkable political organization in history. It is, today, the oldest and the largest political party in the world. It has controlled the United States government for a longer time than any other party or combination of parties in American history—a total of 86 out of 160 years. It numbers among its leaders such distinguished men as Jefferson, Madison, Monroe, Jackson, Cleveland, Wilson, and Franklin Roosevelt, to name only the Presidents. Jefferson is still its patron saint, and from Jefferson it derives not only its democratic liberalism, but its practical combination of farmer and labour support. Originally dedicated to States Rights, it early abandoned this philosophy and embraced centralism; originally advocating a narrow construction of the Constitution, it found no difficulty in the later advocacy of a broad construction of that document. In the early years its strength was largely in the farmers of the South and the West—the farmers whom Jefferson thought the peculiar depositories of wisdom and virtue; with the passing years it has come to find its strength largely in the great industrial centres, though the rural South remains, for peculiar reasons, loyal to the Democrats.

The disintegration of the Federalist party was followed by what is known, somewhat humorously, as the “era of good feelings”. President Monroe, elected in 1816, was re-elected in 1820 without opposition. Not until the Jackson administrations (1829-1837) did opposition elements crystallize into

a party; then the Whig party, under the leadership of Henry Clay and Daniel Webster, made its somewhat fleeting appearance on the political stage. The Whigs were in many respects the legitimate successors to the Federalists. Whig membership was drawn largely from the more prosperous elements of society, from businessmen, merchants, bankers, well-to-do farmers and planters. In so far as the Whigs had a programme—and American parties rarely have consistent programmes—they stood for the “American system”—that is internal improvements, a National Bank, and aid to manufacturers. Notwithstanding the distinction of its leaders, the party enjoyed little success. The panic of 1837 discredited Van Buren and gave the Whigs the Presidency in 1840, but victory was qualified by the speedy death of President Harrison and the accession of Vice-President Tyler—a former Democrat—to the Presidency. The Whigs won the Presidency again in 1848, once more to have the fruits of success taken from them by the death of their President, Zachary Taylor. That was their last national victory. In the mid-fifties the Whig party disintegrated into its component elements, its place taken, to a large degree, by the new Republican party.

The decade of the 50's played havoc with party lines, and threatened the integrity of the Democratic as well as of the Whig party. For the most part American parties successfully ignore or evade real issues, and achieve unity and success through timely compromises and by offering something to every one of the disparate elements that compose them. Occasionally, however, issues arise so important that they cannot be ignored or evaded. Such was the slavery issue that forced its way to the front in the 1850's; such was the money question of the 1890's, and the great depression of the 1930's.

Unwilling or unable to take a stand on the slavery issue, the Whig party broke up. It was supplanted, very briefly, by that curious organization known as the Know Nothing, or American party. This party, officially dedicated to ignoring the momentous issue of slavery, lasted only two or three years. More important was the creation, out of the ruins of the Whig party and of secession elements from the Demo-

cratic, of the Republican party—the only party which has offered continuous opposition to the Democratic. The Democrats too, had trouble with the slavery issue. Northern Democrats, like Chase of Ohio, refused to follow Southern leadership on this issue. Douglas of Illinois tried to compromise the issue, tried to save the Democrats from becoming the official champion of the slave interests. In this he was unsuccessful. By 1858 the Southern wing had taken control of the party—and proceeded to lead it into secession and war.

Secession, Civil War, and Reconstruction had a profound effect on American party history—an effect still felt after the lapse of almost a century. They put the Republican party in power and enabled that party to hold power for a generation. Because the Republicans came to office in time of war, when Democratic opposition was largely withdrawn, they were able to carry through the whole of their programme without difficulty and, in the process, to attach to themselves the loyalty of business and farmer elements in the North. The war, too, made it possible for the Republicans to claim to be the party of Union and of Constitutionalism, and to tar the Democrats with the stick of secession and disunion.

It is a mistake to suppose that Republican supremacy in the period of war and reconstruction meant a submergence of the Democratic party. The Democratic party remained strong, and with nation-wide support. Though the Republicans controlled the Presidency for all but eight years between 1861 and 1901, the Democrats actually polled a plurality of the popular vote in 1876, 1884, 1888 and 1892: only the peculiar workings of the Electoral College deprived the Democrats of the Presidency on two of these occasions. Not only this, but the two parties were pretty evenly balanced in Congress. In the period from 1876 to 1900, for example, the Democrats controlled the lower House fourteen out of twenty-four years.

In the 1890's, as in the 1850's, a vital issue cut across conventional party lines. Free silver was a symbol of larger economic and social issues—of the contest between the agrarian and the business elements in American economy. This issue

divided the Democrats sharply: one element of the party followed Grover Cleveland in support of the gold standard; the other, and larger, followed William Jennings Bryan. The Republicans, too, were divided by the money question, though not so sharply: there was a Silver Republican as well as a Gold Democratic party in the field in the '96 election.

Bryan, a neglected and even despised figure, made the strongest impression on the Democrats of any leader between Jackson and Franklin Roosevelt. He rescued it from the doldrums in 1896, won its nomination to the Presidency three times; and largely dictated the nomination of Wilson in 1912. He was the last representative of the agrarian wing of the party—of those elements in the South and West that looked upon big business as wicked and upon Wall Street as a den of iniquity. The shift of American economy from agriculture to manufactures, the change from debtor to creditor nation, the growth of international economic interests, all condemned this old fashioned agrarianism to inevitable defeat.

What Bryan was to the Democrats, Theodore Roosevelt was to the Republican party. Economically conservative, he was politically radical. He tried to revive true conservatism—the kind of conservatism that was associated, in America, with Hamilton and Webster, that is associated in Britain with Disraeli and Winston Churchill. He laboured, with only temporary success, to make his party truly national, to base conservative policy on a strict regulation of the malpractices of business, and to make the power of the United States felt in world affairs.

Roosevelt's magnetic personality won him the Presidency twice, and temporary success in his programme, but he was repudiated, in 1912, by his own party. The result was a party split, the creation of the short-lived Progressive (Bull Moose) party, and the inevitable triumph of Wilson at the polls. Though Wilson was neither a strict constructionist nor an advocate of States Rights, his soaring idealism, his intelligent progressivism, and his broad internationalism returned the Democratic party to the traditions of Jefferson. With Republican repudiation of Roosevelt's liberal programme and

Wilson's advocacy of the New Freedom—in many respects the precedent for the New Deal—the two parties came close to dividing on logical lines of liberalism and conservatism. Under Wilson the United States began to catch up on its lag in social legislation. Wilson's progressive programme, however, ended with American entry into World War I; thereafter the Republicans took over and reaction set in.

The Republican party of the 1920's was dedicated to "Normalcy" and isolationism. Never before in its history had it been more reactionary, more frankly the instrument of big business; not since the days of Grant had its leadership been as feeble. An era of unprecedented prosperity—at least for the business community—appeared to justify its policies, but the panic of 1929 and the Great Depression that followed were rooted largely in these policies. For the depression the Republicans had no solution, except the traditional one of trying to restore prosperity to business and hoping that somehow some of it would percolate down to the rest of society. Despairing of the Grand Old Party, the country turned in 1930 to the Democrats. The Democratic Congress of 1931, however, could make little headway against Hoover. Not until the election of 1932 swept Franklin D. Roosevelt into the White House did the Government grapple with the depression in a realistic fashion.

Franklin Roosevelt combined, as had no other statesman in American history, an understanding of the world situation, an enlightened liberalism, a shrewd political acumen, boldness, imagination, and personal magnetism. His own extraordinary abilities, plus the achievements of his party in combating the depression and enacting a "New Deal", assured the Democrats of long-continued tenure. Re-elected to the Presidency in 1936, Roosevelt decided, in 1940, to stand for a third term. Washington had refused a third term, and his example had been followed by every one of his successors, until the "third term tradition" was regarded as part of the unwritten Constitution. Roosevelt broke that tradition, as he had broken so many others. His third term drew to a close when the war against the Axis was still being waged throughout

the globe, and a people who regarded him as the chief architect of victory elected him, by a substantial margin, to a fourth term.

Roosevelt's death, early in 1945, and the successful conclusion of the war, was followed by a reaction which seemed to be serious, but proved merely temporary. The Republicans won the lower House, in 1946—for the first time in sixteen years—and looked forward with confidence to a repetition of the pattern of the 1920's. The election of 1948 however returned Harry Truman to the Presidency, and it began to look as if the nation were permanently Democratic. Not since before the Civil War had the Democrats enjoyed as prolonged a tenure as they have sustained since 1932.

If we look to the functions rather than to the chronological history of the American political party, we can see that the party has been, with the possible exception of the Constitution itself, the basic American political institution. It has administered the government; broken down the artificial barriers of the federal system and the separation of powers; strengthened national feeling; ameliorated sectional and class conflict; and advanced democracy. Each of these functions deserves some elaboration.

The first job of the American political party has been to run the government. The Fathers of the Constitution drew up an admirable blue print of government—and went off and left it. They made no practical provision for the day by day business of politics or administration. They neither anticipated nor recognized political parties. Parties are not only unknown to the Constitution, they were unknown to law until as late as 1907. But the Constitution was neither a self-starting nor a self-operating mechanism. Political parties came along and ran the government and—with the assistance of a growing permanent civil service—they have been doing it ever since. They have selected men for office, conducted campaigns, managed elections, formulated policies and issues, taken responsibility for legislative programmes. On the whole they have done these things well. As yet no alternative method of running the business of politics and government has been perfected.

Among the most important of the historical functions of the party has been the harmonizing of American political machinery. The Fathers of the Constitution, children of the Age of Reason, fabricated what we may call a Newtonian scheme of government, static rather than dynamic. Not only that, but since experience had taught them that all government was to be feared, they exhausted their ingenuity in devising methods of checking governmental tyranny. They manufactured, to this end, a complicated system of checks and balances—the federal system, the tri-partite division of powers, the bicameral legislature, judicial review, and so forth.

Such a system, if adhered to rigorously, would result very speedily in governmental paralysis. For example, if members of the Electoral College really followed their own independent judgment in voting for a President—as the Framers supposed they would—the elective system would break down completely. Parties came along and took charge of the whole business of electing a President—with the result that only three times has the election gone from the Electoral College to the House of Representatives.

Parties implemented the federal system, a system otherwise perfectly designed to produce deadlock. If states actually followed local interests, the American constitutional fabric would be torn asunder—as it was in 1860. It is the party, again, that harmonizes state and national interests. Parties made possible, too, the effective workings of a tripartite government. Theoretically, executive, legislative and judiciary departments are independent and equal. If the Executive and the Legislature actually maintained their independence, government could not function. Parties normally harmonize these two political branches of the American government. When, as occasionally happens, one party controls the executive branch and another the legislative branch, there is usually a deadlock. Fortunately this happens but seldom, and when it does the good sense of American politicians finds a way out.

The third major function of the party has been—and still is—to strengthen national feeling and ameliorate the otherwise dangerous sectional and class divisions. It should never be

forgotten that the United States is comparable to a continent rather than to the average nation, and that it contains within its spacious borders as many geographical, climatic, and economic divisions as are found in Europe or South America. Normally these divisions—roughly sectional in nature—would be disintegrating in effect. Fortunately a variety of forces—historical, political, and economic—have countered the natural particularism of the American scene. Of these forces the three most important have been the Constitution, the frontier, and the political party, and the party is not the least of the three. Occasionally, to be sure, parties have come to represent local or sectional interests, and whenever they have done this they have made for trouble—or disappeared. The Federalists became a purely sectional party—and went under. When, in 1860, the Democratic party split along sectional lines and the Republican party emerged as a strictly Northern party, the Union itself split. The re-creation of the Democratic party as a national institution was perhaps the most effective instrument for the restoration of real Union. It is, in short, the party more than any other political institution that persuades Americans to think nationally rather than locally.

In the same way the party has served to moderate class antagonisms and to reconcile class interests. The party is the great common denominator of American society and economy. This fact is often alleged as a heavy criticism of the American party—especially abroad. Parties do not, it is charged, represent real interests, real groups. They do not adequately represent farmers, labour, business, the middle classes. Nor, it might be added, do they represent whites as such or Negroes as such, Catholics or Protestants or Jews, Baptists or Methodists. They even avoid issues which might give fair expression to the interests of these groups.

The instinct of Americans has always been hostile to the alignment of classes in political parties. For nothing, it is clear, could be more dangerous than such an alignment, and nothing gives greater security than the fact that the two major parties represent all classes and interests of American society.

This does not mean that a particular social or economic

interest cannot make itself felt politically. Particular interests, whether economic or political, have two outlets. The first is within the major parties themselves. Thus anyone familiar with the work of platform committees or of conventions, with the compromises and concessions and arrangements that go into the making of party tickets, knows that within the party various interests are represented and can—by eloquence or by political blackmail—get attention to their demands. The second outlet for particular groups or interests is the third or minor party.

The American party system is definitely a two party system. There has never been a successful third party, and minor parties have rarely polled more than a very small percentage of the popular vote. Yet there have been almost innumerable minor parties—Free Soil, Liberty, “Know Nothing”, Greenback, Populist, Farmer-Labour, Progressive, Dixiecrat, Socialist, Prohibition, and many others.

The function of the two major parties is to be all things to all men; the function of the minor parties to be something specific to a particular group of men. The business of the major parties is to capture control of the government and run it. The business of the minor parties is not to capture the government—for that is clearly impossible—but to develop so great a nuisance value that one of the major parties will take over their programmes.

Finally it may be said that the American party has been an effective instrument for democracy. This is a result not of any inherent quality in the party itself, but rather of the dynamics of American politics. Thus each of the major parties has been forced to look for broad popular support, which means that parties inevitably are advocates of an extension of the suffrage. No party has ever taken the risk of openly opposing such an extension: the consequences to it when the extension of suffrage came—as it always did—would have been disastrous. Thus, too, each of the major parties, not being committed in advance to fundamental principles, has ever been on the look out for popular issues. Whatever issues appear to have wide popular support, these

will inevitably be espoused by one or both major parties. Parties know, by experience, that the rewards of election go to the party that has satisfied most popular needs. This does not always mean an aggressive legislative programme, for sometimes the public is weary of legislation and wants quiet. But on the whole the natural pressure of American politics is for an aggressive legislative programme—such a programme as Theodore Roosevelt or Woodrow Wilson or Franklin Roosevelt espoused—and on the whole, therefore, parties tend to champion popular issues.

Nor should it be overlooked, in any analysis of the democratic features of the American party, that the internal structure and organization of the party is, predominantly, democratic. There are exceptions here, to be sure—in the South for example. But those who come to the fore in party politics are the workers, not the aristocrats or the intelligentsia. Almost every political “boss” has worked his way up from ward-leader or county-leader, and the rewards—spoils or recognition—go to the workers. Not riches or even a great name, but hard work and faithfulness, get results in the political party.

Prophecy is notoriously dangerous, yet it is reasonably safe to make some broad generalizations about American parties in the foreseeable future. The United States will continue to maintain a two party system. There will continue to be third or splinter parties: as long as the Electoral College functions as it does now, these minor parties will have only local appeal. The two major parties will continue to have a broad national basis, or will attempt to maintain such a basis. They will differ relatively little on programmes and not at all on principles. Unless some major crisis arises, both parties will continue along moderately conservative lines. Both will seek as candidates “available” men. It is probable that clashes over particular features of domestic policy will be sharp but that in the field of foreign relations the two parties will work together with reasonable amity.

STATE AND LOCAL GOVERNMENT

by ARTHUR W. BROMAGE

(Professor of Political Science, University of Michigan)

WITHIN the federal system of the United States are forty-eight state governments and an estimated grand total of 155,000 units of local government. If experimentation by different states is one of the values of federalism, as Lord Bryce indicated in *The American Commonwealth*, this mission has been fulfilled in local government and administration. Each state has its own variations in city, village, county, town or township, school district, and special district administration. There is no single American system of local administration but forty-eight variables. Local governments in Massachusetts, Michigan, and California, for example, conform to divergent patterns of state laws and constitutional principles. While the states have fostered experimentation in forms of city government (weak-mayor, strong-mayor, commission, and council-manager) they have been notoriously monotonous as to their own structural organization.

The framers of state constitutions have been adept with scissors and paste-pots. In other words new state constitutions were widely evolved as copies of older constitutions. As a result no state has struck out in a bold and imaginative way to try a parliamentary system of government with ministerial responsibility to the state legislature. There has been a pervasive acceptance of the elective chief executive (governor) and of the long ballot to elect the lieutenant governor, state secretary of state, attorney-general, auditor-general, treasurer, and superintendent of public instruction. As newer public functions in health, public welfare, agriculture and conservation, regulation of public utilities and unemployment compensation arose, the authority of governors to appoint, with

state senate confirmation, department heads and regulatory commissions has been expanded. So executive structure, with the exception of such reorganized and integrated states as New York and Virginia, is an amalgamation of an elective chief executive, elective constitutional administrators, and appointive, statutory administrators. All but one of the forty-eight states arm the governor with a veto power over the state legislature.

State legislatures likewise fall into common mould—the bicameral type. Only Nebraska has had the initiative to try a non-partisan, unicameral legislature. That experiment has been widely regarded as a success in eliminating the conflicts between upper and lower houses and in making unnecessary the use of conference committees, as in bicameral legislatures. When Nebraska took an experimental and progressive step in the nineteen-thirties to unicameralism it was anticipated that a few states might follow. So far the weight of tradition has been heavier than the force of the challenge by Nebraska. Forty-seven states still use the bicameral system and, in many states, there is no rational theory as to the differing roles in representation and legislative function between upper and lower chambers. In numerous states bicameralism has become intertwined with the rural “gerrymander”, by which rural counties still dominate the legislative process in states where urban population has become dominant, as in New York, Michigan, and Illinois. Argumentation for a unicameral legislature is at once considered a challenge to continuing rural majorities in the legislatures of urban states.

In spite of the many differences in terminology the state systems of judicial administration have a fundamental similarity. At the base are the petty courts of the justices of the peace. Above these minor courts are courts of general jurisdiction to which the great majority of important civil and criminal cases go in the first instance. About one-fourth of the states provide next for an intermediate court of appeals. All the states have, under a variety of names, a supreme court which is the last resort of an appeal within state judicial administration. State judicial organization in more than a

majority of the states is dominated by the frontier principle of electing judges, from the minor justices of the peace to the supreme court judges. Uniformly the state courts have accepted the responsibility of judicial review of legislative acts, which are challenged in specific cases for their contravention of federal and state constitutional principles. The separation of powers doctrine of the independent executive, legislative, and judicial branches, with judicial review as the last resort to resolve conflicts, is a universal factor in state administration.

It is fair to say that the states are far less important as component units of the federal system than they were prior to 1888, or even before 1933. Especially, the Administration of President Franklin D. Roosevelt (1933-1945) extended the exercise of federal authority through greater use of the interstate commerce and taxing powers. As a result federal regulation grew apace in regulation of commerce, labour, and agriculture. The states lost prestige within the framework of the federal government because of their inability to meet the crisis of the Great Depression in the nineteen-thirties. On the other hand the arguments of reformers that the states be combined into eight or nine great regional governments have come to naught. The forty-eight states not only persist but give every evidence of continuing their traditional role within the federal system, as units to provide services in public administration and regulatory agencies over intrastate commerce and business.

Within the fabric of American local government are some 155,000 units of public administration: municipalities, including cities and incorporated villages; counties; towns and townships; school districts; and special district corporations. For the year 1942, the United States Bureau of the Census made a count of these units of local government. The totals obtained by the Bureau of the Census were 3,050 counties; 16,220 incorporated cities and villages (municipalities); 18,919 townships or towns; 108,579 school districts; and 8,299 special districts: or a grand total of 155,067 units of local government. The Bureau emphasized that this count was based on active units only, and that total number

inevitably fluctuates from year to year as governmental corporations are created and dissolved. The vastness of the United States and the difficulties of statistical analysis are demonstrated by the divergent grand totals for units of local government, as determined by various investigators.

The city is only one of a variety and abundance of local governments which flourish on American soil. The county, township, town, village, school district, and special district, together with cities, make up a diverse species. These governments perform for groups of people, within territorial areas, functions which constitute the sum total of local administration in the United States. Local units of all kinds, corporate and quasi-corporate, grew up, like Topsy, for years without any national policy as to the appropriate number. Each state of the Union went and still goes its own way. In the absence of national policy, impossible under the American federal system, these units of local public administration have developed many forms, procedures, and functions. Since the units coincide or overlap one another in territory and population, the picture is one of layers.

In Michigan, to take one specific example, the incorporated village is within the township; the township, village, and city are within the county; the county is within the state; and, interlarded with other local units are school districts and special districts. The village dweller of Michigan lives in a village, in a local school district, in a township, and in a county. He pays taxes to support all four units, to which he simultaneously belongs. In addition he may also live within a special district established for some specific purpose, such as a park and recreation authority.

The city is only one of the units of local government. It is unquestionably the most significant if the test be money expended or activities performed. With the exception of Washington, D.C., each incorporated city is a legal creature of one of the forty-eight states. After the Colonial period the authority to charter cities passed to the states, and this power was never surrendered under the Articles of Confederation or the Constitution of the United States. Thus the city

is still a creature of a specific state, organized under a state constitution and laws. Broadly speaking cities have received more freedom under state law as to their structural organization than counties. This has resulted from "home rule" in about one-third of the states and optional-charter laws.

The national capital, located in the District of Columbia, is an exception to the American pattern of local self-government. The Constitution gives the Congress power of exclusive legislation over the District. While the District has some of the aspects of state and county governments, and many of the characteristics of a city, it is actually an area completely controlled by the Federal Government. Having no local city council, the District obtains its laws and ordinances from the Congress, and is administered by a commission of three members. Two commissioners are appointed by the President and Senate, and the third commissioner is assigned by the President from the Engineer Corps of the Army. Residents of the District have no vote in local affairs, and do not participate in electing the President and the Congress.

The county is a subdivision of the state, a self-governing administrative district of the state itself. It has been held in a more rigid constitutional and statutory mould so far as forms of organization go. In structure most American counties are of the no-executive, long ballot type, with an elected county board and elected county administrators. A noteworthy result of constitutional forms of county government is that there are only a dozen manager-plan counties in striking contrast to more than 800 council-manager cities. Likewise the county has not received generally, throughout the United States, as wide a range of powers as has been entrusted to cities by state law. The city performs more services more fully.

The exact nature of the county as it exists today varies roughly in accordance with the section of the United States in which it is located. In New England it has become largely a judicial district. In one state of New England—Rhode Island—it is not classed as a local government at all since there is no official body to levy taxes or to carry on functions.

In the South and Far West the county is the primary local unit controlling, among other activities, the courts, public health, welfare, public works, and roads. In the Middle-West townships (usually thirty-six square miles in area) survive and perform, in addition to the counties, services rendered by the county alone in the South and Far West.

The states have not generally followed the English practice of creating county-boroughs, although there are some city-counties in the United States. Virginia is the only state with a consistent policy in this respect. In Virginia cities over 10,000 in population are independent of rural counties and carry on both city and county functions in one administrative framework. Elsewhere in the United States counties and cities customarily overlap each other in geography and constituency, and co-exist as local units. In a few of our metropolitan regions city and county consolidation has been achieved, as in Denver, St. Louis, and San Francisco.

In addition to the city, the county, and the city-county (Virginia), there is also found in the United States the incorporated village, otherwise known in some states as the incorporated town. The incorporated villages or towns are, in effect, small cities with a different legal nomenclature. On the other hand the New England towns and the Mid-Western townships are not analogous to cities. The New England town usually contains both an urban settlement or settlements and rural areas within its boundaries. The town meeting, the town selectmen, and the elected town officers, form a pattern of government and administration which is very different from the mayor-council or council-manager plan in cities. This structural gap, however, has been narrowing in recent years with the development of town managers in New England, especially in Maine.

The Mid-Western township is unlike either the city or the New England town. Outside metropolitan and suburban regions it is primarily a small, rural community. In the Middle-West it is quite generally thirty-six square miles in area. Like the county it lacks a chief executive and has a long ballot. It is widely a district for the assessment of property for taxes,

for judicial administration (justices of the peace), election administration, and certain major functions such as township roads. In recent decades vital township functions in health and public welfare administration have gravitated to the county unit system in state after state. It is the old story in public administration of the search for larger area and tax base to support major functions. The township is not a dying institution but it is no longer healthy and vigorous in the functional sense, except in a spotty way in suburban areas. In suburban townships specialized functions and regulations, such as a township fire department and township zoning ordinances, have been developed.

The school districts are the most numerous of American units of local government. The small rural school district, the village school district, the urban school district, and the county school district unit, evidence American determination to put school administration on a basis separate and distinct from the so-called "political" units of local self-government—cities, villages, counties, towns and townships. More than half of the states have thousands of small, one-room school districts; twelve Southern states have county school district units; the New England states and three others have town or township school district units; Delaware has a state system. The school district is, with little exception, a separate unit of government with its own governing, elective school board and appointed administrative officers and teachers. This divides local government into two fundamental parts—school administration and all other public administration at the local level. This dichotomy will surely be preserved for many years to come. The American people seem to pay their school taxes more willingly, and to favour strongly an elective school board which can administer elementary and high schools without benefit of "political" control or advice.

The American pattern of local government is complicated further by the thousands of special district corporations which have been organized to administer special functions. These have been said, facetiously, to come in fifty-seven different varieties, like pickles. Illustrative are park, water, sewer,

drainage, even mosquito-abatement districts. Beyond question special districts fill a need for certain functional activities, but they add new authorities and promote administrative disintegration.

In the United States more progress has been made in the structural reorganization of cities than in the general consolidation and integration of units of local government. The cities have made dramatic progress in the evolution of council-manager charters, casting off older weak-mayor-council and commission governments. In the metropolitan cities the strong-mayor plan has forged ahead. Our cities have progressed markedly in recent decades. The criticism which was levelled against them by Bryce in *The American Commonwealth* in 1888 is no longer valid today. He criticized them strongly at that time because of the development of the municipal boss. With more than 800 cities operating, in 1949, under professional managers, and with the extensive development of the merit system, the cities, in six decades, had outgrown the era of the spoilsmen.

No "expert" in public administration, starting *de novo* today, would plan the present array of American cities and villages, counties, towns, townships, school districts, and special district corporations. Overlapping jurisdictional layers would not be cut so freely from whole cloth. Citizen groups and taxpayers' associations have hammered away for years on county consolidation, school district consolidation, and township elimination. The forces tending to preserve the *status quo* have thus far been too entrenched for the reformers. Legal intricacies impede consolidation and dissolution of units. The necessary financial readjustments are complex. Officeholders of each local governmental unit have vested interests and do not readily relinquish their positions. It is always so easy to defend what is in public administration, and so difficult to effectuate drastic changes. The pattern of American local government, among the forty-eight states, is intricate and extensive. A gradual approach to progressive alteration and consolidation may be possible, in the long run, through public education, but no easy road to sweeping change lies ahead.

PROBLEMS OF GOVERNMENT PLANNING IN THE UNITED STATES

by JOHN D. MILLETT

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IN a time of continuing social change, ambivalence is not an unusual characteristic. Americans as a whole are as uncertain about government planning as they are about all other aspects of their individual and collective lives. To-day, we may be vigorous in our denunciation of "statism", a new expression much used nowadays in the public press. To-morrow, we may want more schools, more public health measures, more and better roads, greater assurance of economic well-being for the farmer.

Present uncertainties arise partly out of far-reaching changes in the American environment. No one believes these changes have come to an end, but few persons take great satisfaction in their view of what lies ahead. After all, America's history has been unique. For example, industrialization in the United States came rapidly after the Civil War. It contributed greatly to the geographical conquest of the continent, and it provided employment for the large number of Europeans and Asiatics who came to America. The decade of greatest immigration was 1900 to 1910. Since 1929 America has had twenty years of depression, war, post-war prosperity, and an unsought international leadership.

No society can develop certainty in a time of such rapid and unusual events. The United States environment favoured a great industrialization under private auspices, until post-Civil War thinking tended to make a fetish of individualism. Since 1929 Americans have found collective action through government increasingly important to their general well-being. The competing claims of the individual on the one hand (usually the wealthier individuals) and of large numbers in

some social grouping on the other hand have required many and sometimes uneasy reconciliations. In this internal conflict, with its many slogans epitomizing different values and concepts, the phrase "government planning" has occupied an advanced position.

To some persons, government planning means government coercion, or the destruction of all individual liberties. Hayek's *The Road to Serfdom* was welcome ammunition to these individuals, who never noticed that the only experience cited in the volume was drawn from Central Europe with a very different history and culture from America's own. To others, government planning and British Socialism are synonymous. This means that the destruction of the British merchant marine, the liquidation of British overseas investments, and the British trade position are all the consequences of government planning rather than of a long chain of events. The very fact that government operation of some industries may be a last resort helps those who wish to argue that government operation is a failure.

To still others, government planning is the promise of greater and more widespread material benefit, the only hope for preserving individual liberties amid industrial concentration.

Only a few technicians have argued that government planning is no more than a process of formulating general goals for social action and then devising the means for their effective realization.

In the present discussion we may profitably differentiate three different kinds of government planning in the United States.

II

Historically, the term government planning in the United States has been primarily associated with local government. This was appropriate, since until as late as 1933, the only large-scale government administration in the United States was purely local, existing in our large urban centres. In 1930, the total expenditure of the federal or central govern-

ment was just about 50 per cent. of the expenditures of local government.

This local government planning was at first concerned with "the city beautiful", with improving the æsthetic appearance of the many "boom towns" which were a part of American industrialization. Subsequently, local government planning became more and more concerned with the development of parks and recreation areas, the location of streets and public buildings, the improvement of transportation and the many other physical aspects of urban living. The general goal was that of improving the health and welfare of urban populations, although whether this was to be achieved through greater concentration or dispersion, through public housing or private housing, has remained quite controversial. Architects have dominated local government planning, and fiscal limitations have been the downfall of many "ideal" plans.

Yet the concept of local government planning has become more or less accepted throughout the United States, and there is scarcely a municipal corporation which does not have its planning commission.

III

In the second place, especially since 1930, there has been a rapid growth of what I shall label "activity planning" by agencies of the Federal Government. In large part this development has been the consequence of two corollary forces. The New Deal was never at any time a coherent plan or programme. President Roosevelt and his advisers wished to stem the decline of production and employment, and more positively to promote the individual welfare of the masses of American people. A wide variety of expedients was experimented with.

At the same time, when this great expansion in Federal Government administration was taking place, the executive branch had to look to American industry particularly for large scale administrative precedent. The so-called "scientific management movement", which had long been fostered by

American industry and to a lesser extent by local government, now influenced federal administration. Paradoxically enough, scientific management emphasized planning, since the process of fixing the goals for administrative action was a cardinal element in the thinking of those organizational and procedural specialists devoted to realizing increased "efficiency" in all forms of group effort.

It has become exceedingly popular, then, in our Federal Government, to frame defence plans, social security plans, water development plans, hospital plans, airport plans, highway plans, agricultural plans, and educational plans. The very diffuse nature of political power in the United States and the close relationship which has developed between certain organized groups and the administrative agencies which promote their special welfare has encouraged this kind of activity planning. Moreover most government problems are faced in individual terms. Few people to-day quarrel about the necessity for this kind of planning. Indeed there are periodic complaints from Congressmen and others that a particular government agency has failed to make adequate plans to carry out its particular work.

But over the course of the past fifteen years the administrative agencies of the Federal Government have done a great deal of individual planning of increasing competence. A wide variety of planning documents are constantly coming from various agencies.

IV

In the third place, there is the concept of government planning which can best be identified as "government economic planning". This means the assumption by the government of responsibility for fixing broad goals for the nation's economy and the use of effective means for insuring the realization of those goals. Thus far this kind of government planning is still very much in an uncertain state of development.

On the one hand there is still controversy in the United States about the role of government in economic affairs. As

a practical politician, Mr. Roosevelt held a position quite different from that of Mr. Hoover. If an economy primarily under individual management could provide only declining levels of production and unemployment, then Mr. Roosevelt believed in social action through government to correct this trend. Probably to-day this general attitude is widely accepted. Indeed, as Republican candidate for the Presidency, Mr. Dewey endorsed this attitude in the 1944 campaign. He was more equivocal in the 1948 campaign, perhaps to his regret. The Employment Act of 1946, now a statute of the Federal Government, does no more than give legislative sanction to the political attitude that government intervention can and should prevent widespread unemployment.

To be sure, there are still persons who refuse to accept these political decisions. Mr. Hoover's voice is still heard twenty years afterwards in protest. In a time of general economic prosperity such as the United States has enjoyed in the last eight years, criticism has been louder and more frequent. Some people have apparently forgotten American experience from 1929 to 1933, and others talk as if the depression never began until Mr. Roosevelt was inaugurated in 1933. Few believe, however, that "rugged individualism" will ever again be a practical political philosophy through three and a half years of declining production and employment.

But if a fundamental political philosophy about the relationship of government to the economy has now emerged in the United States, agreement about the tools and techniques of action is non-existent. In practice, the New Deal of the 1930's found only one practical programme of general economic action. This was the expenditure of fairly sizable sums on public works and work relief projects, financed primarily by government borrowing. The political necessity for this kind of action was constantly opposed by those with an attachment for the economic idea of budget balancing.

During the course of World War II there was little national debate about economics. At the conclusion of the war, the political problems were quite different. The large-

scale unemployment which was anticipated in the period of reconversion failed to occur. The Federal Government budget, while reduced from war-time levels, was still four to five times larger than any of the pre-war New Deal budgets. At the same time, war-time tax levels brought a balanced budget. The general economic problems were primarily those of dividing available resources among many different competing governmental and private demands. Even in 1949, the American economy continues to function at levels approaching full employment. The Federal Government budget remains approximately in balance but at continuing peace-time record levels. Sizable appropriations for national defence, for veterans' benefits, and for economic assistance to Europe have prevented any sizable reductions in government spending. Tax reduction has been only modest. At the same time, more and more demands are being heard for additional government outlays for education, health, housing, and social welfare programmes.

It may well be that the very size of Federal Government expenditures and Federal Government taxation provide an answer for the present to the problem of techniques for government influence upon the economy. Certainly there is no sentiment of any widespread size in the United States for government ownership of any important segment of the economy. For the foreseeable future, government's impact will be mostly indirect. Whether these techniques will be sufficient to achieve a continuing full employment remains to be demonstrated.

One other factor should be added. In its economic as well as in its political thinking, the United States generally tends to be continental. The post-war international leadership which the United States has had to exercise still rests on uneasy foundations. Economically, there is little understanding about the relationship of national material well-being to international conditions. It is ironic indeed that a nation which professes to desire economic recovery in Western Europe is unprepared to purchase greater quantities of goods from those same countries as their production expands.

Americans fail to understand the extent to which their own economic well-being since the end of World War II has depended upon the volume of foreign exports. Those exports must either continue to be paid for by internal taxation or by external importation. At the moment it looks as if the nation's political processes will favour the first rather than the second. The recent action of the United Kingdom in devaluing the pound sterling offers no reassurance on this score. American goods for export will be more highly priced on foreign markets, which gives British traders a competitive advantage in those markets. Devaluation will have little effect apparently in increasing American imports of British goods, although it may encourage some further tourist traffic. For all the good intentions voiced after the September economic conference in Washington, America's place in a world trade system remains uncertain.

Yet all the present interest in political-economic organization has done one grave disservice. It has tended to make us forget or overlook the fundamentals of economic well-being. The high level of prosperity at present enjoyed in the United States is not the result solely of organizational arrangements. It is the consequence of the extensive raw material resources, the productive plant, the technological development, and the labour supply of the United States. These are, of course, the basic factors in any economic situation. Just as Americans generally fail to realize the fundamental conditions which create the need for "austerity" in Great Britain, so there is a general failure to acknowledge the unusually fortunate status of America in material resources.

Government economic planning can never accomplish miracles. It can do no more than work with available resources and prevailing institutions in an attempt to ameliorate or perhaps improve existing circumstances. Government economic planning in the United States will necessarily be different from that in any other country in the world because of the fundamental differences in material resources, in distribution of income, and in political traditions.

THE PROBLEM OF LOYALTY IN GOVERNMENT SERVICE

by FRANCIS BIDDLE

(Formerly Attorney General of the United States)

"Liberty is not a means to a higher political end.
It is itself the highest political end."—LORD ACTON.

ON 15th June, 1949, President Truman suggested at a press conference that the United States was experiencing a wave of hysteria as a result of spy trials and loyalty inquiries; that every great crisis brought a period of public hysteria; that this would die out, as it always had, when the stress was over. The present situation, he thought, was like that which confronted the country at the time of the Alien and Sedition laws of 1798.

Historical analogies may be misleading, for the pattern of history never precisely re-extends itself. If fear of the French Revolution was largely responsible for the Alien and Sedition laws in America, it was also a moving cause in England, particularly after the Terror began in 1792. It is reflected in Pitt's "Committee of Secrecy to investigate the charges of promoting a Convention to subvert the Constitution and introduce French anarchy"; in the suspensions of the Habeas Corpus Act, the state trials of 1794, the Seditious Meetings Act of 1796, and the suppressive "Four Acts" of 1817 and "Six Acts" of 1819. For a long generation needed reforms were blocked by the simple process of identifying them with subversion and revolution. "Everything", wrote Cockburn in his *Memorials*, "rung and was connected with the Revolution in France; which, for above twenty years, was, or was made, all in all." Fear bred timidity. Whitebread, who with other radical Whigs had joined "The Society of Friends of the People" in the spring of 1792, wrote to Cartwright in

1814: "I am fearful of joining any association, lest I should do more harm than good."

The causes which brought about the French Revolution did not exist in Great Britain. Yet, according to Sir Thomas Erskine May: "There is no longer room for doubt that the alarm of this period was exaggerated and excessive." Fear of the consequences of the young Russian Revolution ran through the sedition trials in the Federal and State Courts in the United States during and following the first world war. Rose Pastor Stokes in 1918 was convicted and sentenced to ten years by a United States District Court (the conviction was later set aside by the Circuit Court of Appeals) for arguing against the war—"I am for the people and the government is for the profiteers." The trial judge denounced the Russian Revolution as "the greatest betrayal of the cause of democracy the world has ever seen".

Did a wave of hysteria exist in America? The *New York Herald-Tribune* commented that "some persons, some institutions, are indulging in a familiar brand of hysterics". The *New York Times*, in a survey of the public's reaction to the "spy" investigations and the trial of the Communists in New York, a few days after the President's remarks, reported mixed trends. In New England there was sharp reaction against the demand of the House Un-American Activities Committee for a list of college text-books (a "check-up" promptly disowned by the Committee when they heard from their constituents). In the South the feeling against Communists was running very strong, and common sense appeared to be giving way to hysteria. In the Middle and Far West, and indeed throughout the country generally, there was misgiving and perplexity. The *Times* in an accompanying editorial suggested that the reporters whose questions had elicited Mr. Truman's comments "were aware of something unhealthy in the country's present state of emotion". However, a correspondent thought that the President's remarks might lead foreigners to suppose "that our country is in the grip of mob violence . . . legalities . . . thrown to the winds . . . civil rights . . . abrogated in an orgy of nerves". Of course nothing like that existed. Yet in

1947 the President's Committee on Civil Rights had reported that "a state of near-hysteria now threatens to inhibit the freedom of genuine democrats".

Leaders of American thought in many fields are deeply disturbed by what is going on. The distinguished historian, Henry Steele Commager, sees a real danger in the increasing fear of ideas. Professor John Dewey, though admitting "in the abstract" that membership in the Communist Party "unfits one for the office of teaching impressionable students", nevertheless believes that such a prohibition would "add fuel to the flame of blind and emotional action". School teachers voted to exclude Communists in a resolution overwhelmingly adopted at the annual meeting of the Public Education Association. Dr. Conant, President of Harvard University, although opposed to the appointment of Communists as members of the teaching profession, would not try to root out "fellow-travellers" from the faculty—a programme followed in Washington and other universities. And recently, Robert M. Hutchins, President of the University of Chicago, has attacked in stinging language this effort "to persecute people into conformity . . . the dreadful unanimity of tribal self-adoration . . . characteristic of the Nazi State".

The question confronting the Federal Administration, and, I venture to assert, the Government of Great Britain, cannot be easily answered, because it involves the clash of two fundamental social considerations, apparently in conflict—protection of the State, and our own tradition of free opinion and thought. Most of us have come to believe that the U.S.S.R. is totalitarian, imperialistic and ruthless. We have watched her techniques of espionage and fifth column further her thrust for chaos successfully in more than one country, and threaten the stability of others. Germany in such ventures, for a time was highly successful. Russia bored into Canada. We must protect our own integrity from any such internal dangers.

Within the sphere of government in our two countries it is interesting to note the preventive measures adopted. The

Prime Minister in March, 1948, answering questions on the floor of the House of Commons, thought it inadvisable to try to define the kind of "organizations the membership of which would render a civil servant ineligible for employment". He indicated that the employee would be told the charge against him—"chapter and verse"—and given an opportunity to answer it. There would be an Advisory Board of three retired civil servants. The programme would be moderately administered. There would be no general purge. Those who could not be trusted would be excluded from secret work, so that Communists would be kept "in the State service except in a very limited number of posts". But the sources of information could not always be revealed—"if we do that, we destroy anything like an effective civil service". A year later Mr. Attlee told the House that fifty persons had "received notice": three had resigned, ten were transferred, sixteen reinstated, twelve were awaiting transfer, none had been dismissed. From this it would appear that the problem had been soberly handled; and that, in accordance with British tradition, the Ministry is given very broad powers—far broader than in the United States—and is expected to exercise them with judgment and discretion. The machinery of investigation and review sounds simple and informal.

The American system is far more elaborate. On 21st March, 1947, President Truman by Executive Order prescribed procedures for the loyalty programme applicable to federal employees. Investigations of incumbents and of applicants for appointment are made, in most cases by the Federal Bureau of Investigation. If the preliminary investigation turns up "derogatory information with respect to loyalty" a full field investigation is conducted. If the result warrants, the individual, if an incumbent, is notified of a hearing before a loyalty board in his department; if an applicant, before one of the fourteen regional boards set up in the civil service. Appeals from dismissals of incumbents are allowed to the head of the department; and, in both types of cases, finally to a Loyalty Review Board, set up under the President's order. No court review is provided. The Review Board

administers the programme, issues regulations, supervises and unifies the procedure, conducts "audits". However, it has no power of subpoena, nor funds with which to pay the expenses of witnesses. Its minutes are not available to the public. All hearings are held in secret, out of consideration for the employee.

The basis for unfavourable action is disloyalty to the Government of the United States; but "disloyalty" (or "loyalty") is nowhere defined. The "standards" for a finding of disloyalty include "membership in, affiliation with, or sympathetic association with any foreign or domestic organization . . . designated by the Attorney General as totalitarian, Fascist, Communist, or subversive". What "subversive" means is not specified. Such designation is conclusive. It is emphasized, however, in the President's statement accompanying the order, and in the regulations, that "membership in an organization is simply one piece of evidence . . . in a particular case". However, under the provisions of certain statutes, which have been in force since before the war, members of an organization that advocates the overthrow of the government by force or violence, must be dismissed, and these provisions have been construed to apply to members of the Communist Party.

The President's Order provides that "the charges shall be stated as specifically and completely as, in the discretion of the employing department or agency, security considerations permit". Investigative agencies are authorized to refuse to disclose the names of confidential informants.

Shortly after the Order was promulgated concern was expressed that the administration of the programme might be abused because of lack of any requirements that the issues be clearly defined, the charges supported, the employee confronted with the evidence, the adjudication based on specific findings of fact. Has this concern been justified?

As of 30th June, 1949, an analysis made by the Review Board showed a total of 9,987 cases received in the loyalty boards, of which 1,978 were discontinued by the Federal Bureau of Investigation, 914 were Department of Army

cases, not reported to the Review Board, 748 employees left the service prior to any decision, 1,172 field investigations were pending, leaving a net total of 5,175 adjudications, as follows:

Eligible determinations	4,879
Ineligible determinations	296
Dismissed	91
Restored after appeal	61
Remanded for further consideration	10
In process of appeal	134

From these statistics it would appear that the programme had been enforced with moderation, and review exercised with substantial relief.

Are the adjudications just? Is the programme effective? What are the results?

Without access to the records, which are not available, no conclusive answers can be given to these questions. There is an indication from records which, through the courtesy of the employee involved, I have been able to examine, that "loyalty" is a varying conception in the minds of the members of the boards, often determined without clear objective, necessarily changing colour with individual prejudice or preference—homage to free enterprise, for instance; or traditional Southern opposition to Negro "equality". Let me give a few examples.

A member of a loyalty board asked these questions:

Q.: "Did you attend any meetings of other organizations . . . which held non-segregated meetings? Apparently that was at least a part of the attraction of these organizations. It is rather unusual, you will have to admit, for persons born and raised in Texas to feel that that would be the reason to join the Washington Book Shop (listed by the Attorney General), because he could there attend unsegregated meetings."

A.: "There are other people from the South too who have awakened to what this matter of segregation means."

Q. "What were your views regarding the Spanish Revolution?"

Q. "Did you ever hear by any of your friends or associates the war described as an imperialist war?"

A.: "It might well be."

Q.: "What was your Government bond-buying record?"

The employee was dismissed but ordered reinstated by the Review Board. The example is not untypical, and illustrates how far the examiners, usually not lawyers, relieved from the limitations of the hearsay rule (the hearings are recognized as administrative, and the rule expressly does not apply), and without the constraining force of tight definition, tend to wander from the issue.

Dorothy Bailey was discharged after ten years of competent service with the Department of Labour. There is apparently nothing in the record, standing alone, that could support this action, which must therefore be rested on reports of informants presumably unknown to Miss Bailey. She was accused of being a Communist. Her lawyer requested "some identification of this malicious gossip". "If this testimony is true", answered the chairman of the Review Board, "it is neither gossip nor malicious. We are under the difficulty of not being able to disclose this."

The statistics I have cited do not indicate the psychological or political effects of this attempt to probe men's minds. "The thought of a man is not triable; for the Devil himself knoweth not the mind of man." Before arriving at any conclusion as to the wisdom of the programme, a study would have to be made of the effect of the decisions not only on the employee but on his associates, and on possible future applicants. Will it encourage men with ambition and imagination to seek public employment? That so small a number of individuals were discharged or resigned—over 2,300,000 were given a preliminary check—suggests that there is no such a thing as a "red danger" within the government. Is this end then worth the means? I am not speaking

of actual expense—a substantial item—but of the partial surrender of a social good, the freedom in our democracy up until now from this kind of surveillance.

A good deal can be said for the English system of attacking the problem administratively, probing weak spots rather than trying to make a grand over-all sweep. The administrative approach sets up no precedents to plague the future, since it is by definition pragmatic and discretionary. On the other hand the American approach involves certain of the characteristics of a criminal trial, in which punishment is the result of crime. Charged with evil association (the most common complaint) the employee has none of the defences afforded every defendant in a criminal case. Yet the punishment may be far more severe than a year or two in jail. Re-employment in the Federal Government is, of course, impossible. Obviously public service in state or municipality would almost certainly be barred. And great difficulty would be encountered in getting a private job, if what happened to the ten script-writers in the Hollywood investigation by the Un-American Committee of the House of Representatives is any indication. They were promptly discharged by their employers with no charges against them except the contempt citations for their refusing to answer whether or not they were Communists.

Although the investigations are held in secret it is impossible to conceal from the employee's associates in the office that an investigation is on, and the news spreads very fast through the department. It has been claimed that this has created a sense of panic in the government services—who will be next? That I gravely doubt. Again judgment is difficult. But I suspect that among those rare employees who are distinguished by originality or a sense of critical values, creative thinking and independent action is not encouraged. Men will not long struggle against the inhibitions of external thought control, but will prefer the more timid and cautious approach, if the alternative is loss of their jobs.

Take these questions, for instance, in another loyalty board case:

Q: "Do you have 'Soviet Communism', by Beatrice and Sidney Webb?" The witness had it, but had never read it, and added hastily: "I should like to say, in connection with the Webb book, he was a British Lord."

In the same hearing a witness was asked whether "you ever feel that Mr. X's mind runs to politics. . . . We have information . . . concerning which I want to get either a verification or a denial from you, and I would name the person if I had the name . . . that this person and you were discussing Mr. X. and you told this person that X's mind runs to politics. . . ."

There can be hardly any doubt that those who have been put through the degrees of investigation, whether or not ultimately cleared, often suffer acute humiliation. They must pay for the expense of their defence; and, if suspended pending the final decision, receive no pay until reinstated, when the payment is made retroactive.

The procedure in the loyalty test cases tends to fix a pattern which will be difficult to break, and which is being reflected in the individual States. Last winter the State of New York adopted a statute calculated, it was believed, to eliminate from the public schools, superintendents, teachers and employees, "who are members of subversive organizations". The legislature solemnly found and declared "that members of such groups frequently use their office or position to advocate and teach subversive doctrines . . . sufficiently subtle to escape detection in the classroom". Accordingly the Board of Regents (in charge of the public schools) was directed to adopt an appropriate procedure to disqualify and remove such undesirables, and to "make a listing of organizations which it finds to be subversive", and permitted to use the list already prepared by the Attorney General of the United States.

The State of Washington, in the preamble to a statute adopted in 1947, warns us that: "These are times of public danger; subversive persons and groups are endangering our domestic unity, so as to leave us unprepared to meet aggression, and under cover of the protection afforded by the bill of rights . . . seek to destroy our liberties and our freedom by

force, threats and sabotage, and to subject us to the domination of foreign powers"—and supports this "finding" on language of J. Edgar Hoover, Director of the Federal Bureau of Investigation, to the effect that Communist "propaganda . . . has been projected into practically every phase of our national life". The statute creates a Fact-Finding Committee on Un-American Activities in the State of Washington to investigate facts concerning individuals or groups "whose activities are such as to indicate a purpose to foment internal strife, discord or discussion . . . confuse and mislead the people, and impede the normal progress of our state and nation". In the opinion of these legislators stimulating discussion apparently prevents normal progress. Contrast the words of Thomas Jefferson, spoken 146 years ago, to the people of that little country, but a quarter of a century old, who had just elected him their third President:

"If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."

Is all this evidence of hysteria? It may be that the voters have cooler heads than those whom they elect. But a trend is very evident. It is not, as some seem to think, of very recent origin, but may be traced from the first world war, when sedition was revived in the heat of the fear of the Russian Revolution, aliens were brutally raided for deportation, and the New York legislature, over the eloquent protest of Charles Evans Hughes, excluded five duly elected Socialists from membership, just as, 150 years before, John Wilkes, under indictment for seditious libel, was expelled over the protest of Edmund Burke and the petition of the Middlesex electors. But such guilt by association is a new conception in our customs and laws. It is a complete departure from the fundamental concept that guilt must be personal. And how indeed can a man be judged for his beliefs and not on his actions, if we are to preserve the basis of popular government, the conviction that out of open and free discussion emerges a mature public opinion?

THE UNITED STATES GOVERNMENT AND THE FUTURE

by THOMAS K. FINLETTER

(Formerly Head of the Economic Co-operation Administration Mission in the United Kingdom)

IT is rash to speak of the future of a form of government in a fast moving time such as we are now in. About all one can do is try to appraise the direction and strength of the forces which are working to change the government and make a guess as to the effect these forces will have. I do not mean by this to exclude the possibility of improvement in the procedures of the American Government by the conscious direction of the people quite apart from the imperative of events. But I do think that the impact of world affairs will be the controlling factor in the evolution that will take place.

For the Constitution, written and unwritten, will change. No structure of government is static. The American Constitution, though, is less susceptible to change than most. The forces bearing on it are and will be powerful, but so is the inertia of the Constitution.

The Constitution of the United States, being written, is not open to the same kind of gradual evolution as is, say, the British Constitution. The most important procedures of the American Federal Government can be changed only by formal amendment of the Constitution, and the process of amendment is uncommonly difficult. Moreover, the authors of the Constitution put into this rigid framework a number of devices of government which were intended to deny power to both the Executive and the Legislature. The result is an inflexible balancing of power between these two branches which makes it very difficult to adapt the Constitution to the needs of post-World War II America.

The most important of these devices is the fixed terms of office of the President and the two Houses. The members of

the House of Representatives and the Senate, secure in their fixed tenure, which neither the President nor anyone else can shorten, are not subject to the direction or discipline of the Executive. No penalty can be inflicted on the members of the House if they defeat the President. On the contrary, the two Houses are required by their own self-interest and that of the people to defeat the President frequently. For unless they do Congress will lose its position in the government and freedom will be endangered. Let me explain.

The popular election of the President came about by accident. The Philadelphia Convention which drafted the Constitution was determined that the President should not be popularly elected. A series of unforeseen happenings reversed this purpose of the founders, and the President of the United States is now chosen by popular vote. Being so chosen, and being the only official of the United States Government who is elected by the whole people, the President has enormous latent and sometimes enormous actual power, even in time of peace.

Moreover he has this power for a fixed term, for Congress cannot shorten his tenure except by impeachment. Lacking the ultimate authority of dismissing the President from office, Congress cannot afford to do the things that a parliamentary legislature can. It cannot accept bill after bill and policy after policy as can a parliamentary legislature which is secure in the knowledge that, if it chooses, it may dismiss the executive. Congress must resist executive pressure almost in direct proportion to the strength of that pressure, unless Congress is to wither away and unless individual freedom is to be imperilled. For (at least so it seems to me) individual freedom cannot be assured except under a form of government in which the ultimate power is in the people acting through a representative legislature which controls the flow of executive power.

* * *

Now this rigid Constitution, embodying the purpose of its authors to deny power in the interest of freedom, is being subjected to heavy pressures by internal and external happenings, most of which are demanding strong policies and therefore increased power and effectiveness in the Federal Govern-

ment. In domestic matters—if one can make this distinction—the Federal Government is now called upon to do things which in 1787 would have seemed excessive in any government and unthinkable in the American federal structure under which the states were sparing of their grants of power to the central government. In foreign affairs the increase in pressures on the Federal Government is even greater. After a century and a half of respect for Washington's and Jefferson's advice to avoid permanent alliances and entanglements with Europe, the United States has abandoned the idea that it can remain isolated behind its ocean moats, and is concerning itself actively with problems in all fields—political, economic and military—in all places where the interests of the United States are affected—that is, in the whole world. The Constitution is being called upon to handle an entirely different kind of task from that which its authors prepared it for. Events have reversed the judgment of the authors of the Constitution, who saw in the balance of power between the Executive and the Legislature a guarantee of liberty through the denial of power to government. It is still necessary to guard jealously the exercise of governmental power in the interest of freedom, but it is no longer possible to protect freedom by the simple device of denying power to government.

* * *

The Constitution has always conceded one exception to this general rule of balancing the two branches of government against each other in the interests of individual freedom. From the beginning of the Republic, war has suspended the workings of the separation of powers and the conflict between Executive and Legislature. In the Civil War and in World Wars I and II, the Executive took or was given all the power he needed to preserve the union or defend the country. The negation of power is a peace-time phenomenon only. And even in peace-time there were sporadic exceptions. The system allows occasional short-lived peace-time bursts of power, during which the Executive dominates the Congress.

These sporadic bursts of power in peace time have come from the popular leader Presidents, such as Thomas Jefferson,

Woodrow Wilson and Franklin Roosevelt, who used the great prestige which the popular election gave them to upset, for a while, the balance of power and to put over great policies such as the New Freedom and the New Deal. But the bursts of power of the popular leaders have never lasted long, unless a war happened; and the normal condition of balance of power has been quickly restored. The balance is usually restored early in the administration of the popular leader himself. Only the two World Wars continued beyond their normal term the early rushes of Wilson and Franklin Roosevelt. And always in the past the popular leaders have been succeeded by orthodox Presidents who respected the separation of powers and the normal condition of balance between the Executive and the Legislature which the Constitution seeks.

In the period after World War II we have not followed this pattern faithfully. We have not returned to Normalcy as in 1921. The present Administration is vigorous. The 1948 election gave new prestige to the Executive, and the cold war and America's new responsibilities abroad have made it necessary that this prestige be used. In foreign affairs we have today little of the negative attitude which characterized the administrations of Harding, Coolidge and Hoover. The great measures of foreign policy—post-war relief and loans, the Marshall Plan, the Atlantic Treaty—have been accepted by both parties. There are some rumblings of resistance, as on the military aid programme, and perhaps these rumblings may develop into something more serious; but to date the record shows the Constitution adapting itself quite well to the new demands of foreign policy.

In domestic matters, the record is the opposite. Despite the President's victory at the polls in 1948, the 81st Congress has defeated utterly the Administration's civil rights programme, has blocked the revision of the Taft-Hartley Labour Law, has intervened increasingly in the details of Administration policies, and generally has shown its determination to maintain its independent place in the American system.

It is much too early to say whether or not the Executive and Congress will be able to adapt themselves and their relations

to each other to the new role of the United States in world affairs. It may be that the wisdom of Congressional and Executive leaders will convert the antagonism which is inherent in the separation of powers into a partnership in the face of danger which will be adequate for our purposes. It may be possible to restrict the conflict of Executive and Legislature to domestic matters and to maintain an executive-legislative truce on matters which bear on the new responsibilities of the United States abroad.

There are of course difficulties in the way of such a course and there are certain unsatisfactory aspects of it if it succeeds. It will need considerable subtlety and character to preserve this dichotomy between domestic and foreign affairs. When is a given piece of legislation a matter of foreign policy as to which the executive-legislative partnership should work, and when is it a domestic matter on which we can let loose the traditional conflict of the separation of powers? Can we separate domestic and foreign policy in this way? Will we want to continue the suppression of debate which the bipartisan truce between Executive and Legislature involves? Will not occasion arise when the need of Congress to defend its position in the American system will seriously damage some important policy in this new and extremely difficult role in the world which the United States has taken on?

All these questions will be answered by the course of events in the next decade. If things continue as they have since the end of the war, I believe that we will see no great changes in the procedures of the Federal Government. But if the improvisations do not work, if some great policies which the people want break down because of the failure of the Executive and the Legislature to maintain the compromise, if, in short, the original purpose of the Constitution succeeds in holding the Executive and the Legislature at arm's length in a condition of balanced powers, then public opinion may insist that something be done to change our governing procedures so that they will be able to do what the people want done.

* * *

There has already been some speculation as to what might

happen in such circumstances, one of the most interesting being by Professor Harold Laski. He has suggested that the nature of the American political parties will change; that the existing mild differences between them will increase; that one of the parties will become more conservative and the other more advanced; and that both parties will develop a strong discipline among their members by means of which the parties, acting in concert with the man whom they have installed in the Presidency, will control the Congress and the Government. Presumably this divergence in party beliefs which Professor Laski foresees will come from differences over domestic policies. For the two parties are in general agreement on foreign policy.

I believe that the development of our system of government along the lines of Professor Laski's proposal would be undesirable. The effect of it would be to subordinate Congress to the disciplined power of the parties, and this, I believe, must not be done if individual liberty is to be maintained.

In a properly working parliamentary system, discipline in the parties is not a threat to liberty. The parliamentary legislature has, subject to the will of the people, the ultimate power in government—the right to dismiss the executive. A parliamentary legislature can put up with a considerable amount of discipline because it is secure in its knowledge that if it wants to and when public opinion will back it, it can throw over the discipline and dismiss the group which wields it. But in the American system Congress cannot have this sense of security. If Congress were to yield to discipline by the parties it might some day find itself only the recorder of decisions taken by the parties outside its halls. One must hope that this will never come about.

The question is, though, will it come about? Will the two major parties diverge (one to the right and the other to the left) to such an extent that they will build up the discipline of which Professor Laski speaks? I do not think they will. The natural political state of affairs in the United States, with its feeling against class concepts, is to have the political platforms of the two parties on both domestic and foreign

policies as close as possible to that median line of popular opinion where 51 per cent of the votes lie. There is a compelling self-interest (the desire to get elected) at work to prevent the parties from moving too far from the centre line of belief which is the dominant sentiment of the American people.

This is not to say that the American parties will be identical in their political creeds. The parties have differed through all their history: the Democratic party and its predecessors having been the party of reform and of the strong popular leader-Presidents, while the Republican party and its predecessors have leaned toward Congressional supremacy in relation to the Executive and toward more orthodox social views. This divergence may increase. Some of the important organized groups, such as labour, the farmers or management, may attach themselves to one or other of the parties; and this would be a move in the direction of Professor Laski's prophecy. But even if this happened, it would be a long way from the kind of party discipline of which Professor Laski speaks. The American parties are too large to be dominated by any one group or by any likely combination of groups. There is, I think, no reason to believe that our Government will not be able to handle its domestic problems in the way it always has—by bursts of action such as the New Freedom, the New Deal and the Fair Deal, followed by periods of consolidation. This may not seem to be the best of all possible ways of doing things, but it has worked so far, and I see no reason to believe it will not work adequately in the limited future of which we are speaking.

* * *

The requirements of our new foreign policy may however produce some changes in our government which have not been foreseen. If bipartisan agreement on foreign policy and bi-branch co-operation between the Executive and Congress falter, if the separation of powers and the conflict between Executive and Legislature become too powerful for the will to make things work, then a new and serious problem will arise. And, as I have said, this problem will become very serious indeed if the result of the conflict is to defeat policies

which the people of the country believe necessary to its safety.

Under such circumstances, and it is not impossible that such circumstances will arise, will there be any important change in the procedures of the Federal Government? Is there any chance, in this event, of an amendment to the Constitution whose purpose would be to make it more possible for us to handle our responsibilities abroad? ¹

I do not think that such an amendment is likely within any future about which we can talk. Important changes have been made in the Constitution by formal amendment, but never one which tampered with the fixed terms of office or the balance of power between the President and the Congress which is at the heart of the American system. The impact of public opinion would have to be tremendous before any such basic change could become a political possibility.

And even if popular opinion did reach such a pitch, I believe that the response would take another course. If the cold war becomes more intense, if the visible threats, political and economic, to Western Society become more serious, if public opinion in the United States becomes exasperated at the failure of some great national policy because of the conflicts inherent in the American system of government, then the response will be, I think, not to amend our basic law, but to treat the situation as a crisis and to adopt the remedies which are natural to our form of government—indeed to all democratic governments—in time of war. Just as we have always given the Executive all the power he needed during hostilities—even at the expense of a temporary subordination

¹ Senator Fulbright of Arkansas introduced such an amendment in the 80th Congress. The amendment provided that the President by executive order or the Congress by concurrent resolution might at any time terminate the terms of office of the President and the two Houses of Congress. In such event, a general election would be held at which all three—President, House and Senate—would be elected for six years or until their terms were ended by a new executive order or concurrent resolution. The purpose of the amendment was (1) to give to Congress the ultimate power of dismissing the Executive and thus to free Congress of the need to defeat the executive from time to time in order to assert its authority; and (2) to give the President the power to refer an issue on which he was defeated by the Congress to the people for their decision. The proposed amendment made no progress in the Senate,

of Congress—so I think that if the cold war were to come closer to a hot war, we would adopt the procedures we have used in the past when the country was in danger.

This would not be a desirable way of doing things. Any interference with the authority of Congress, even during actual hostilities, is dangerous. It would be most unfortunate if the practice were extended to deal with the problems of peacetime. But I think this is the most likely course if the international situation reaches the crisis stage.

It is more likely, though, that the international situation will continue along its present lines for a while—a state of near-crisis in the sense that certain fundamental conditions are so bad that the task of solving them seems almost impossible and the price of failing to solve them seems likely to be fatal—but not a crisis in the sense that drastic emergency action appears to be needed to defend the country against immediate disaster. It looks, that is, as though the cold war will remain cold for a while; and a cold war is not the kind of crisis which will, I believe, either compel a temporary impairment of the authority of Congress or a major Constitutional reform.

We shall see instead, I think, an effort to adapt the Constitution in its present form to the rising demands of our new foreign policy. Increased co-operation between the executive and legislative branches, efforts of the Executive to reach agreement with Congressional leaders on major foreign policies as they are being developed, and increased willingness of the parties to stop politics at the water's edge and to create bi-partisan national foreign policies—these are the lines we have been following and most likely will continue to follow.

If it were not for the size of the stakes, one would be content with this. But the new role of the United States in foreign affairs carries with it the risk of the failure of that role, and the consequences of failure are beyond measure. As an act of faith, I do not believe that we will fail; I believe that the necessary changes in our ways of governing will be made. But it will be a great struggle, a great test of statesmanship, and one cannot but be uneasy as one watches the issue develop.

POETRY AND THE AMERICAN GOVERNMENT

An Anthology compiled by MURIEL SPARK, Co-Editor of *Forum*

AMERICAN poetry on political or state affairs has naturally been conditioned by the forms of government peculiar to the historical development of the United States, and in this sense differs from similar verse of the European countries. Amongst the early Colonists, for instance, the poets were concerned with nostalgic memories of their home land or with the problems of working the land on which they had settled rather than with the edicts of distant Whitehall, as in one of the earliest poems from America (Rich's *Newes from Virginia*):

Let England knowe our willingnesse, for
that our work is goode;
We hope to plant a nation, where none
before hath stood.

It was not until pressure from Britain began to make its presence felt amongst the people, in the events which led up to the War of Independence, that verse on public affairs began to be written in any effective degree. Even then, it was such colourful episodes as the Boston Tea Party, and such momentous personalities as Paul Revere, rather than the economic forces behind the Revolution and the various Acts passed by George III's Parliament, that stirred the imagination of the poets.

In the following selection, the poems fall into the categories of (1) poems on public affairs which influenced legislation through public feeling; (2) poems in celebration and commemoration of public events; and (3)—by far the most numerous—poems in honour of statesmen and great historical figures. It is noteworthy that in the third category the most frequent subject of praise is Abraham Lincoln.

Looked upon as an exponent of liberty, Lincoln became the symbol of the American attitude, and his death by assassination lent a legendary feature to his memory, coinciding as it did with an upwelling of national spirit and creative energy. The significance of Lincoln to the American poet is apparent up to recent times in the work of such poets as Edwin Markham, Edwin Arlington Robinson, Edgar Lee Masters, Vachel Lindsay, James Oppenheim, and John Gould Fletcher, to mention only some.

Not a few politicians have themselves achieved recognition as poets, yet seldom have they written the type of verse that might be called "public spirited". This is understandable, since poetry was to these men more in the nature of a relaxation than a vocation; such poets as John Hay (Private Secretary to Lincoln, and American diplomat successively in the Paris, Vienna and Madrid Legations), Robert Underwood Johnson (American Ambassador to Italy) and Richard Henry Wilde (a member of the House of Representatives in 1815), expressed American affairs in terms of public speech and action, rather than through the reflective attitude of the poet.

American poets to-day are by no means silent on national and international affairs; but they, alas, stand outside the scope of this anthology, since time has not yet effected that metamorphosis upon their words, which occurs only when politics acquire the status of history.

MERCY WARREN (1728-1814)

From *The Squabble of the Sea Nymphs*

(*This poem gives a satirical account of the Boston Tea Party episode, when the angry citizens dumped the East India Company's cargo of surplus tea into Boston Harbour in 1773.*)

Grey Neptune rose, and from his sea green bed,
He wav'd his trident o'er his oozy head;
He stretch'd, from shore to shore, his regal wand,
And bade the river deities attend;
Triton's hoarse clarion summon'd them by name,
And from old ocean call'd each wat'ry dame.

In council met to regulate the state,
 Among their godships rose a warm debate,
 What luscious draught they next should substitute,
 That might the palates of celestials suit. . . .

* * * * *

(While luxury creates such mighty feuds,
 E'en in the bosoms of the demi gods;)
 Lent their strong arm in pity to the fair
 To aid the bright Salacia's generous care;
 Pour'd a profusion of delicious teas,
 Which, wafted by a soft savonian breeze,
 Supply'd the wat'ry deities, in spite
 Of all the rage of jealous Amphytrite.

JONATHAN SEWALL (1748-1808)

From *War and Washington*

Urged on by North and vengeance those valiant champions
 came,
 Loud bellowing Tea and Treason, and George was all on flame,
 Yet sacrilegious as it seems, we rebels still live on,
 And laugh at all their empty puffs, huzza for Washington!

JOHN TRUMBULL (1750-1831)

From *Elegy on the Times* (1774)

Oh, Boston! late with ev'ry pleasure crown'd,
 Where Commerce triumph'd on the favouring gales,
 And each pleas'd eye, that rov'd in prospect round,
 Hail'd thy bright spires and bless'd thy op'ning sails!

* * * * *

Alas, how chang'd! the swelling sails no more
 Catch the fair winds and wanton in the sky;
 But hostile beaks affright the guarded shore,
 And pointed thunders all access deny.

* * * * *

And damp'd alas! thy soul-inspiring ray,
 Where Virtue prompted and where Genius soar'd,
 Or quench'd in darkness, and the gloomy sway
 Of Senates venal and the liveried Lord!

There shame sits blazon'd on the unmeaning brow,
And o'er the scene thy factious Nobles wait,
Prompt the mixt tumult of the noisy show,
Guide the blind vote and rule the mock debate.

From *McFingal* (*The Liberty Pole*)

(*A satirical piece on the struggles between the Loyalists and the revolutionary Whigs.*)

By this, McFingal with his train
Advanced upon th'adjacent plain,
And full with loyalty possest,
Pour'd forth the zeal that fired his breast.

"What mad-brain'd rebel gave commission,
To raise this May-pole of sedition?

* * * * *

"Ye dupes to every factious rogue
And tavern-prating demagogue
Whose tongue but rings, with sound more full,
On th'empty drumhead of his skull;
Behold you not what noisy fools
Use you, worse simpletons, for tools?
For Liberty, in your own by-sense,
Is but for crimes a patent license,
To break of law th'Egyptian yoke,
And throw the world in common stock;
Reduce all grievances and ills
To Magna Charta of your wills;

PHILIP FRENAU (1752-1832)

(*A friend and fellow-student of James Madison, Frenau, helped to found the American Whig Society in 1769, and is looked upon as the first poet of the American Independence.*)

From *On the Death of Benjamin Franklin*

Thus, some tall tree that long hath stood
The glory of its native wood,
By storms destroyed, or length of years,
Demands the tribute of our tears.

When monarchs tumble to the ground,
 Successors easily are found:
 But, matchless FRANKLIN! what a few
 Can hope to rival such as YOU,
 Who seized from kings their sceptred pride,
 And turned the lightning's darts aside!

PHILLIS WHEATLEY (1754-1785)

(As a child of eight years Phillis Wheatley was brought from her native Africa and sold on the Boston slave market. She fell into sympathetic hands in her master's household, where her rapid acquisition of the English language and her unusual literary talents were encouraged.)

From *His Excellency General Washington*
 . . . thick as leaves in Autumn's golden reign,
 Such, and so many, moves the warrior's train.
 In bright array they seek the work of war,
 Where high unfurl'd the ensign waves in air.
 Shall I to Washington their praise recite?
 Enough thou know'st them in the fields of fight.
 Thee, first in peace and honours,—we demand
 The grace and glory of thy martial band.
 Fam'd for thy valour, for thy virtues more,
 Hear every tongue thy guardian and implore!

JOSEPH HOPKINSON (1770-1842)

(In the author's own words, the object of the poem from which the following extract is taken, was "to get up an American spirit which should be independent of and above the interests, passions, and policy of both belligerents.")

From *Hail, Columbia!*

Sound, sound, the trump of Fame!
 Let our Washington's great name
 Ring through the world with loud applause,
 Ring through the world with loud applause;
 Let every clime to Freedom dear,
 Listen with a joyful ear.

With equal skill, and godlike power,
He governed in the fearful hour
Of horrid war; or guides, with ease,
The happier times of honest peace.

WILLIAM CULLEN BRYANT (1798-1878)

(A notable personage in Nineteenth Century New York, Bryant was entitled by his friends "the first citizen of the Republic", whilst the poet Emerson referred to him more soberly, as "a native, sincere, original, patriotic poet.")

From *The Death of Lincoln*

Oh, slow to smite and swift to spare,
Gentle and merciful and just!
Who, in the fear of God, didst bear
The sword of power, a nation's trust!

In sorrow by thy bier we stand,
Amid the awe that hushes all,
And speak the anguish of a land
That shook with horror at thy fall.

RALPH WALDO EMERSON (1803-1882)

(One of the most profound thinkers and writers of American letters, Emerson was possibly the first American poet whose influence extended to Europe. His mind was too widely philosophical to be confined within the limits of political partisanship, through the medium of poetry; and in the following lines he made it clear that his vision was larger than the troubles of the times to which he refers.)

From *Ode (Inscribed to W. H. Channing)*

Though loath to grieve
The evil time's sole patriot,
I cannot leave
My honied thought
For the priest's cant,
Or statesman's rant.

If I refuse
 My study for their politique,
 Which at the best is trick,
 The angry Muse
 Puts confusion in my brain
 But who is he that prates
 Of the culture of mankind,
 Of better arts and life?
 Go, blindworm, go,
 Behold the famous States
 Harrying Mexico
 With rifle and with knife!

* * * * *

The God who made New Hampshire
 Taunted the lofty land
 With little men;—
 Small bat and wren
 House in the oak;—
 If earth-fire cleave
 The upheaved land, and bury the folk,
 The southern crocodile would grieve.
 Virtue palters; Right is hence;
 Freedom praised, but hid;
 Funeral eloquence
 Rattles the coffin-lid.

What boots thy zeal,
 O glowing friend,
 That would indignant rend
 The northland from the south?
 Wherefore? to what good end?
 Boston Bay and Bunker Hill
 Would serve things still;—

HENRY WADSWORTH LONGFELLOW (1807-1882)

(Better known for his epic poetry, Longfellow published his Poems on Slavery some twenty years before the abolition of slavery; whilst

causing hostile criticism at the time of publication, these poems helped to evoke public discomfort by an awareness of the conditions of the slave.)

From *The Slave's Dream*

Beside the ungathered rice he lay,
His sickle in his hand;
His breast was bare, his matted hair
Was buried in the sand.
Again, in the mist and shadow of sleep,
He saw his Native Land.

Wide through the landscape of his dreams
The lordly Niger flowed;
Beneath the palm-trees on the plain
Once more a king he strode;
And heard the tinkling caravans
Descend the mountain-road.

* * * * *

The forests, with their myriad tongues,
Shouted of liberty;
And the blast of the Desert cried aloud,
With a voice so wild and free,
That he started in his sleep and smiled
At their tempestuous glee.

He did not feel the driver's whip,
Nor the burning heat of day;
For death had illumined the Land of Sleep,
And his lifeless body lay
A worn-out fetter, that the soul
Had broken and thrown away!

JOHN GREENLEAF WHITTIER (1807-1892)

(Whittier, a Quaker, helped to found the American Anti-Slavery Society in 1833 and devoted his energies to the Abolitionist cause. In a note to the following poem Whittier described the sufferings by disease and thirst of the negro slaves on board a French ship, on which several of the slaves who attempted suicide were shot or hanged as

examples to others. Finally, according to Whittier, "thirty-six of the negroes, having become blind, were thrown into the sea and drowned!")

From The Slave-Ship

Gloomily stood the captain,
 With his arms upon his breast,
 With his cold brow sternly knotted
 And his iron lip compressed.
 "Are all the dead dogs over?"
 Growled through that matted lip;
 "The blind ones are no better,
 Let's lighten the good ship."

Hark! from the ship's dark bosom,
 The very sounds of hell!
 The ringing clank of iron,
 The maniac's short, sharp yell!
 The hoarse, low curse, throat-stifled;
 The starving infant's moan,
 The horror of a breaking heart
 Poured through a mother's groan.

* * * * *

"Overboard with them, shipmates!"
 Cutlass and dirk were plied;
 Fettered and blind, one after one,
 Plunged down the vessel's side.

JAMES RUSSELL LOWELL (1819-1891)

(A staunch Abolitionist, Lowell adopted the subtle method, through his Biglow Papers, of creating a rustic Yankee character as a mouthpiece for some sage and straightforward speaking. In this way, Lowell gave vent to some of his feelings on slavery, war, and the political situation in general.)

From The Biglow Papers

Them thet rule us, them slave-traders,
 Haint they cut a thunderin' swarth
 (Helped by Yankee renegaders),
 Thru the vartu o' the North!

We begin to think it's nater
To take sarse an' not be riled;—
Who'd expect to see a tater
All on eend and bein' biled?
Ez fer war, I call it murder,—
There you hev it plain an' flat;
I don't want to go no funder
Than my Testyment fer that;
God hez sed so plump an' fairly,
It's ez long ez it is broad,
An' you've gut to git up airly
Ef you want to take in God.

'Taint your eppyletts an' feathers
Make the thing a grain more right;
'Taint afollerin' your bell-wethers
Will excuse ye in His sight;
Ef you take a sword an' dror it,
An' go stick a feller thru,
Guv'ment aint to answer for it,
God'll send the bill to you.

* * * * *

Aint it cute to see a Yankee
Take sech everlastin' pains,
All to git the Devil's thankee
Helpin' on 'em weld their chains?
Wy, it's jest ez clear ez figgers,
Clear ez one an' one make two,
Chaps thet make black slaves o' niggers
Want to make wite slaves o' you.

From The Biglow Papers

Guvener B. is a sensible man;
He stays to his home an' looks arter his folks;
He draws his furrer ez straight ez he can,
An' into nobody's tater-patch pokes;
But John P.
Robinson he

Sez he wunt vote fer Guvener B.

* * * * *

General C. is a drefle smart man;

He's ben on all sides thet give places or pelf;

But consistency still wuz a part of his plan.—

He's ben true to *one* party,—an' thet is himself;—

So John P.

Robinson he

Sez he shall vote for General C.

HERMAN MELVILLE (1819-1891)

(After an adventurous life at sea, Melville established a reputation as a writer of stories [amongst them the classic, Moby Dick]. The Civil War stimulated his poetic ability, and in the following lines he portrayed the famous Federal General, Ulysses Grant, who later became President for two terms.)

From *Chattanooga* (November, 1863)

A kindling impulse seized the host

Inspired by heaven's elastic air;

Their hearts outran their General's plan,

Though Grant commanded there—

Grant, who without reserve can dare;

And, "Well, go on and do your will,"

He said, and measured the mountain then:

So master-riders fling the rein—

But you must know your men.

On yester-morn in grayish mist,

Armies like ghosts on hills had fought,

And rolled from the cloud their thunders loud

The Cumberland's far had caught:

To-day the sunlit steeps are sought.

Grant stood on cliffs whence all was plain,

And smoked as one who feels no cares;

But mastered nervousness intense,

Alone such calmness wears.

WALT WHITMAN (1819-1892)

(Whitman's influence, like that of his compatriots Emerson and Poe, spread beyond the boundaries of America, and persists in English poetry to this day. As in his own lifetime, opinion is still divided as to the merits of his work, yet the most extreme partisans for and against Whitman seem to agree that his Memories of President Lincoln constitutes one of the finest elegiac sequences in the English tongue.)

From *Memories of President Lincoln*

When lilacs last in the dooryard bloom'd,
And the great star early droop'd in the western sky in the
 night,
I mourn'd, and yet shall mourn with ever-returning spring."

Ever-returning spring, trinity sure to me you bring,
Lilac blooming perennial and drooping star in the west,
And thought of him I love.

* * * * *

Coffin that passes through lanes and streets,
Through day and night with the great cloud darkening
 the land,
With the pomp of the inloop'd flags with the cities draped
 in black,
With the show of the States themselves as of crape-veil'd
 women standing,
With processions long and winding and the flambeaus of the
 night,
With the countless torches lit, with the silent sea of faces and
 the unbared heads,
With the waiting depot, the arriving coffin, and the sombre
 faces,
With dirges through the night, with the shout and voices
 rising strong and solemn,
With all the mournful voices of the dirges pour'd around the
 coffin,
The dim-lit churches and the shuddering organs—where
 amid these you journey,
With the tolling, tolling bells' perpetual clang,

Here, coffin that slowly passes,
I give you my sprig of lilac.

* * * * *

I cease from my song for thee.
From my gaze on thee in the west, fronting the west, com-
muning with thee,
O comrade lustrous with silver face in the night.

Yet each to keep and all, retrievements out of the night,
The song, the wondrous chant of the grey-brown bird,
And the tallying chant, the echo arous'd in my soul,
With the lustrous and drooping star with the countenance
full of woe,
With the holders holding my hand nearing the call of the
bird,
Comrades mine and I in the midst, and their memory ever
to keep, for the dead I loved so well,
For the sweetest, wisest soul of all my days and lands—
and this for his dear sake,
Lilac and star and bird twined with the chant of my soul,
There in the fragrant pines and the cedars dusk and dim.

* * * * *

O Captain! my Captain! our fearful trip is done,
The ship has weather'd every rack, the prize we sought is
won,
The port is near, the bells I hear, the people all exulting,
While follow eyes the steady keel, the vessel grim and
daring;

But O heart! heart! heart!

O the bleeding drops of red.

Where on the deck my Captain lies,
Fallen cold and dead.

AMERICAN GOVERNMENT

A SELECT BIBLIOGRAPHY

THIS list of books dealing with the government of the United States is in no sense comprehensive. Limitations of space have made it necessary to include in it only a small proportion of the vast literature on the subject. In particular, certain classes of publications have been omitted entirely. These include the volumes of the U.S. statutes, laws and federal regulations, presidential messages and papers, reports of cases adjudged in the Supreme Court and other American courts, biographies and memoirs of men and women who have been prominent in American public life, books on political science and its relation to the American environment, books about general American history, the various periodical publications devoted to the art and science of government, newspaper and magazine articles, and poetry, drama and fiction dealing with various aspects of government in America.

In deciding which of several books on the same subject should be included, preference was normally given to recently published books still in print and to books likely to be available in libraries throughout the world. I should like to acknowledge the very great help I received in compiling this bibliography from the General Reference and Bibliography Division, Reference Department, The Library of Congress, Washington, D.C. Responsibility for the inclusion or omission of any book is, of course, mine.

SYDNEY D. BAILEY

- Journals of the Continental Congress, 1774-1789.* Washington: Government Printing Office. 1904-37. Thirty-four volumes.
Debates and Proceedings in Congress, 1789-1824. Washington: Gales and Seaton. 1834-56. Forty-two volumes.
Register of Debates in Congress, 1824-1837. Washington: Gales and Seaton. 1825-37. Fourteen volumes.
The Congressional Globe, 1833-1873. Washington: The Globe Office. 1834-73. Forty-six volumes.
Congressional Record, 1873-date. Washington: Government Printing Office. 1874-date.

- U.S. Constitution: Annotation of Cases decided by the Supreme Court to 1938.* Washington: Government Printing Office. 1938. 1,246 pp.
- U.S. Government Manual, 1949.* Washington: National Archives Register. 1949. 725 pp.
- Our American Government: What is it? How does it function?* New edition. Washington: Government Printing Office. 1946. 60 pp.
- Commission on Organization of the Executive Branch of the Government.* New York: McGraw-Hill. 1949. 524 pp.
- The Book of the States.* Chicago: Council of State Governments. 1935-49. Seven volumes.
- AMOS, SIR MAURICE SIELDON. *Lectures on the American Constitution.* Longmans Green. Toronto: Carswell. 1938. 178 pp.
- ANDERSON, WILLIAM. *The Units of Government in the United States: An Enumeration and Analysis.* Chicago: Public Administration Service. 1945. 49 pp. New edition in preparation.
- ANDREWS, CHARLES M. *The Colonial Period of American History.* New Haven: Yale University Press. London: Oxford University Press. Toronto: Ryerson. 1934-38. Four volumes.
- BATES, F. G., and O. P. FIELD. *State Government.* Second Edition. New York: Harper. 1939. 561 pp. New edition in preparation.
- BEARD, CHARLES A. and others. *American Government and Politics.* Tenth edition. Macmillan. 1949. 832 pp.
- BEARD, CHARLES A. *Economic Origins of Jeffersonian Democracy.* Macmillan. 1927. 474 pp.
- BEARD, CHARLES A. *An Economic Interpretation of the Constitution of the United States.* Macmillan. 1935. 330 pp.
- BECKER, CARL L. *The Declaration of Independence: a Study in the History of Political Ideas.* New York: Knopf. Toronto: Ryerson. 1942. 286 pp.
- BEMIS, SAMUEL F. *A Diplomatic History of the United States.* Revised Edition. New York: Holt. Toronto: Oxford University Press. 1942. 934 pp.
- BINKLEY, WILFRED E. *American Political Parties: Their Natural History.* Second Edition. New York: Knopf. Toronto: Ryerson. 1945. 420 pp.
- BINKLEY, WILFRED E. *President and Congress.* New York: Knopf. 1947. 312 pp.
- BROGAN, D. W. *American Themes.* Hamish Hamilton. 1948. 288 pp.
- BROGAN, D. W. *Government of the People.* New York: Harper. Toronto: Musson. 1944. 415 pp.
- BROGAN, D. W. *Politics and Law in the United States.* Cambridge University Press. Toronto: Macmillan. 1941. 127 pp.
- BROGAN, D. W. *The American Political System.* Revised Edition. Hamish Hamilton. 1947. 416 pp.
- BROWN, STUART G. ed. *We hold these Truths: Documents of American Democracy.* Second Edition. New York: Harper. 1948. 429 pp.
- BRYCE, JAMES, Viscount. *The American Commonwealth.* Revised Edition. Macmillan. 1931-33. Two volumes.
- BRUCE, HAROLD R. *American Parties and Politics: history and role of political parties in the United States.* Third Edition. New York: Holt. 1936. 616 pp.
- BURNETT, EDMUND C., ed. *Letters of Members of the Continental Congress.* Washington: Carnegie Institution. 1921-1936. Eight volumes.

- BURNETT, EDMUND C. *The Continental Congress*. Macmillan. 1941. 757 pp.
- CARR, R. K. *The Supreme Court and Judicial Review*. New York: Farrar and Rinehart. 1942. 304 pp.
- CHAMBERLAIN, JOSEPH P. *Legislative Processes: National and State*. New York, London: Appleton-Century. 1936. 369 pp.
- COMMAGER, HENRY S., ed. *Documents of American History*. Fourth Edition. New York: Appleton-Century-Crofts. 1948. 781 pp.
- CORWIN, EDWARD S. *The Constitution and what it means To-day*. Tenth Edition. Princeton University Press. London: Oxford University Press. 1948. 273 pp.
- CORWIN, EDWARD S. *The President, Office and Powers, 1787-1948: History and Analysis of Practice and Opinion*. Third Edition. New York University Press. London: Oxford University Press. 1948. 552 pp.
- CORWIN, EDWARD S. *Twilight of the Supreme Court*. Princeton University Press. London: Oxford University Press. 1934. 237 pp.
- CUSHMAN, ROBERT E. *The Independent Regulatory Commissions*. Oxford University Press. 1941. 780 pp.
- EWING, CORTEZ A. M. *Judges of the Supreme Court*. University of Minnesota Press. London: Oxford University Press. 1938. 124 pp.
- EWING, CORTEZ A. M. *Presidential Elections, from Lincoln to Franklin D. Roosevelt*. University of Oklahoma Press. 1940. 226 pp.
- FARRAND, MAX. *The Framing of the Constitution of the United States*. New Edition. New Haven: Yale University Press. London: Oxford University Press. 1936. 281 pp.
- FARRAND, MAX, ed. *The Records of the Federal Convention of 1787*. Revised Edition. New Haven: Yale University Press. London: Oxford University Press. 1937. Four volumes.
- FAULKNER, HAROLD U. *American Economic History*. New York: Harper. 1943. 784 pp.
- FINLETTER, THOMAS K. *Can Representative Government do the Job?* New York: Reynall and Hitchcock. Toronto: McClelland. 1945. 184 pp.
- GALLOWAY, GEORGE B. *Congress at the Crossroads*. New York: Crowell. Toronto: Oxford University Press. 1946. 374 pp.
- GODSHALL, WILSON L., ed. *Principles and Functions of Government in the United States*. New York: Van Nostrand. 1948. 1,121 pp.
- GRAVES, WILLIAM BROOKE. *American State Government*. Third Edition. Boston: Heath. 1946. 1,104 pp.
- GRAVES, WILLIAM BROOKE, comp. *Reorganization of the Executive Branch of the Government of the United States: A Compilation of Basic Information and Significant Documents, 1912-48*. Washington: Library of Congress, Legislative Reference Service. 1949. 425 pp.
- GRIFFITH, ERNEST S. *History of American City Government*. Oxford University Press. 1938. 464 pp.
- GROVES, HAROLD M. *Financing Government*. New York: Holt. 1939. 777 pp.
- HADLEY, ARTHUR T. *Undercurrents in American Politics*. New Haven: Yale University Press. London: Oxford University Press. 1927. 185 pp.
- HAINES, CHARLES G. *The American Doctrine of Judicial Supremacy*. Berkeley and Los Angeles: University of California Press. Toronto: Carswell. London: Cambridge University Press. 1932. 705 pp.

- HAINES, CHARLES G. *The Role of the Supreme Court in American Government and Politics, 1789-1835*. Berkeley and Los Angeles: University of California Press. London: Cambridge University Press. 1944. 679 pp.
- HAMILTON, ALEXANDER, JAMES MADISON, and JOHN JAY. *The Federalist, or the New Constitution*. Edited with an introduction and notes by Max Beloff. Oxford: Blackwell. New York: Macmillan. 1948. 484 pp.
- HARRIS, JOSEPH P. *Election Administration in the United States*. Washington: Brookings Institution. 1934. 453 pp.
- HAYNES, GEORGE H. *The Senate of the United States: its History and Practice*. Boston: Houghton Mifflin. 1938. Two volumes.
- HELLER, ROBERT. *Strengthening the Congress*. Washington: National Planning Association. 1945. 41 pp.
- HICKS, JOHN D. *A Short History of American Democracy*. Boston: Houghton Mifflin. 1944. 859 pp.
- HOCKETT, HOMER C. *The Constitutional History of the United States*. Macmillan. 1939-40. Three volumes.
- HOFSTADTER, RICHARD. *The American Political Tradition and the Men who made it*. New York: Knopf. 1948. 378 pp.
- HORWILL, H. W. *Usages of the American Constitution*. Oxford University Press. 1925. 251 pp.
- JENSEN, MERRILL. *The Articles of Confederation: An Interpretation of the social-constitutional History of the American Revolution, 1774-1781*. Madison: University of Wisconsin Press. 1948. 284 pp.
- JOSEPHSON, MATTHEW. *The Politicos, 1865-1896*. New York: Harcourt, Brace. Toronto: McLeod. 1938. 760 pp.
- KELLY, ALFRED H., and WINIFRED A. HARBISON. *The American Constitution: its Origin and Development*. New York: Norton. London: Allen and Unwin. 1948. 940 pp.
- KEY, V. O. *Politics, Parties, and Pressure Groups*. Second Edition. New York: Crowell. 1947. 767 pp.
- LASKI, HAROLD J. *The American Democracy: A Commentary and an Interpretation*. Allen and Unwin. New York: Viking. Toronto: Macmillan. 1949. 788 pp.
- LASKI, HAROLD J. *The American Presidency*. Allen and Unwin. New York: Harper. 1940. 278 pp. Reprint in preparation.
- LEWIS, EDWARD R. *A History of American Political Thought from the Civil War to the World War*. Macmillan. 1937. 561 pp.
- LIPSON, LESLIE. *The American Governor from Figurehead to Leader*. University of Chicago Press. London: Cambridge University Press. 1939. 282 pp.
- LYON, LEVERETT S. and others. *Government and Economic Life: Development and Current Issues of American Public Policy*. Washington: Brookings Institution. London: Faber. 1939-40. Two volumes.
- MACCORKLE, S. A. *American Municipal Government and Administration*. Boston: Heath. 1948. 639 pp.
- MACDONALD, AUSTIN F. *American City Government and Administration*. Fourth Edition. New York: Crowell. 1946. 657 pp.
- MACDONALD, AUSTIN F. *American State Government and Administration*. Third Edition. New York: Crowell. 1945. 655 pp.
- MATHEWS, JOHN M. *The American Constitutional System*. Second Edition. New York, London: McGraw-Hill. 1940. 526 pp.

- McCLURE, WALLACE M. *International Executive Agreements: Democratic Procedure under the Constitution of the United States*. New York: Columbia University Press. London: Oxford University Press. 1941. 449 pp.
- McLAUGHLIN, ANDREW C., and ALBERT B. HART, Editors. *Cyclopedia of American Government*. New York: Peter Smith. 1949. Three volumes.
- McLAUGHLIN, ANDREW C. *A Constitutional History of the United States*. New York: Appleton-Century. 1936. 833 pp.
- McLAUGHLIN, ANDREW C. *The Foundation of American Constitutionalism*. New York University Press. London: Oxford University Press. 1932. 176 pp.
- MERRIAM, CHARLES E., and HAROLD F. GOSNELL. *The American Party System: An Introduction to the Study of Political Parties in the United States*. Fourth Edition. Macmillan. 1949. 530 pp.
- MILLET, JOHN D. *The Process and Organization of Government Planning*. New York: Columbia University Press. London: Oxford University Press. 1947. 187 pp.
- MILLSAUGH, ARTHUR C. *Democracy, Efficiency, Stability: An Appraisal of American Government*. Washington: Brookings Institution. 1942. 522 pp.
- MORISON, SAMUEL ELIOT, ed. *Sources and Documents illustrating the American Revolution, 1764-1788, and the formation of the Federal Convention*. Second Edition. Oxford: Clarendon Press. 1929. 378 pp.
- MORISON, SAMUEL ELIOT and HENRY S. COMMAGER. *The Growth of the American Republic*. Third Edition. Oxford University Press. 1942. Two volumes.
- MUNRO, WILLIAM B., EDWARD M. SALT and ARNOLD J. ZURCHER. *The Government of the United States, National, State, and Local*. Fifth Edition. Macmillan. 1946. 887 pp.
- NAYLOR, ESTILL E. *The Federal Budget System in Operation*. Washington: Hayworth Printing Co. 1941. 306 pp.
- NICHOLS, R. F. *The Disruption of American Democracy*. Macmillan. 1948. 612 pp.
- ODEGARD, PETER H., and E. ALLEN HELMS. *American Politics: A Study in Political Dynamics*. Second Edition. New York: Harper. 1947. 896 pp.
- OGG, FREDERIC A., and P. ORMAN RAY. *Introduction to American Government*. Ninth Edition. New York: Appleton-Century-Crofts. 1948. 1,135 pp.
- PARRINGTON, VERNON L. *Main Currents in American Thought: An Interpretation of American Literature from the Beginnings to 1920*. New York: Harcourt, Brace. Toronto: McLeod. 1939. Three volumes.
- PATMAN, WRIGHT. *Our American Government*. Chicago: Ziff-Davies. Toronto: Ambassador. 1948. 143 pp.
- PATTERSON, C. PERRY. *Presidential Government in the United States: The Unwritten Constitution*. Chapel Hill: University of North Carolina Press. London: Oxford University Press. 1947. 301 pp.
- PENNIMAN, HOWARD R. *SAIT'S American Parties and Elections*. Fourth Edition. New York: Appleton-Century-Crofts. 1948. 668 pp.
- PFIFFNER, J. M. *Public Administration*. New York: Ronald Press. 1946. 621 pp.
- PHILLIPS, ROBERT. *American Government and its Problems*. Edited by E. M. Sait. Boston: Houghton Mifflin. 1941. 813 pp.
- PRESCOTT, ARTHUR T., comp. *Drafting the Federal Constitution: A Rearrangement of Madison's Notes*. Louisiana State University Press. 1941. 838 pp.

- PRITCHETT, C. H. *The Roosevelt Court: A Study in Judicial Politics and Values*, 1937-1947. Macmillan. 1948. 314 pp.
- RANKIN, ROBERT S. *Readings in American Government*. New York, London: Appleton-Century. 1939. 644 pp.
- SAIT, E. M. *American Parties and Politics*. See "Penniman".
- SAIT, E. M. *American Constitutional Development*. See "Swisher".
- SHOUP, EARL L. *The Government of the American People*. Boston: Ginn. 1946. 1,206 pp.
- SMITH, EDWARD C., and ARNOLD JOHN ZURCHER. *A Dictionary of American Politics*. Revised Edition. New York: Barnes and Noble. 1946. 358 pp.
- SMITH, JAMES B. *Studies in the Adequacy of the Constitution*. Los Angeles: Parker and Baird. 1939. 366 pp.
- STANWOOD, EDWARD. *A History of the Presidency*. New Edition revised by Charles Knowles Bolton. Boston: Houghton Mifflin. 1928. Two volumes.
- STONE, HAROLD A., DON K. PRICE, and KATHRYN H. STONE. *City Manager Government in the United States*. Chicago: Public Administration Service. 1940. 279 pp.
- STUBBS, WILLIAM B., ed. *Select Readings in American Government*. New York: Scribners. 1948. 780 pp.
- SWISHER, CARL BRENT. *American Constitutional Development*. Edited by E. M. Sait. Boston: Houghton Mifflin. 1943. 1,079 pp.
- TOMKINS, DOROTHY C. *Material for the Study of Federal Government*. Chicago: Public Administration Service. 1948. 338 pp.
- TOCQUEVILLE, ALEXIS CHARLES HENRI MAURICE CLÉRRÉ DE. *Democracy in America*. Oxford University Press (World's Classics). 1947. 2 volumes.
- VAN DOREN, CARL C. *The Great Rehearsal: The Story of the Making and Ratifying of the Constitution of the United States*. New York: Viking Press. London: Cresset Press. Toronto: Macmillan. 1948. 336 pp.
- WARREN, CHARLES. *Congress, the Constitution, and the Supreme Court*. New Edition. Boston: Little, Brown. 1935. 346 pp.
- WARREN, CHARLES. *The Making of the Constitution*. New Edition. Boston: Little, Brown. Toronto: McClelland. 1937. 832 pp.
- WARREN, CHARLES. *The Supreme Court in United States History*. Boston: Little, Brown. 1937. Two volumes.
- WELLS, ROGER H. *American Local Government*. New York, London: McGraw-Hill. 1939. 200 pp.
- WILSON, WOODROW, President. *Congressional Government*. New Edition. Boston: Houghton Mifflin. 1925. 344 pp.
- WILSON, WOODROW, President. *Constitutional Government in the United States*. New York: Columbia University Press. London: Oxford University Press. 1921. 236 pp.
- WRIGHT, BENJAMIN F. *The Growth of American Constitutional Law*. Boston: Houghton Mifflin for Reynall and Hitchcock. Toronto: McClelland. 1942. 276 pp.
- YOUNG, R. A. *This is Congress*. Second Edition. New York: Knopf. 1946. 267 pp.
- ZINK, HAROLD. *A Survey of American Government*. Macmillan. 1948. 809 pp.
- ZINK, HAROLD. *Government and Politics in the United States*. Macmillan. 1946. 1,006 pp.
- ZINK, HAROLD. *Government of Cities in the United States*. Macmillan. 1948. 637 pp.

CORRESPONDENCE

DEMOCRACY AND THE QUAKER METHOD

Sir,

We are most grateful to T. Edmund Harvey for his kind comments on our book *Democracy and the Quaker Method in Parliamentary Affairs*, but, to avoid misunderstanding, would expressly dissociate ourselves from his implied approval of national or coalition government. We nowhere refer to such a subject, which is not relevant to the kind of group unity which we were concerned to discuss.

Similarly proportional representation has no immediate relevance to our theme. We wanted to contribute as much to the psychological as to the political problems of democracy.

We are, Sir,

Yours faithfully,

FRANCIS E. POLLARD

BEATRICE E. POLLARD

ROBERT S. W. POLLARD

5 Spencer House,
Spencer Road, Chiswick, W.4

PROPORTIONAL REPRESENTATION

Sir,

In his article on "The British Constitution in 1948" Dr. Hawgood says that proportional representation in our University constituencies has not had conspicuous success. I wonder what are his grounds for that judgment? It is certainly true that the Universities have not achieved fair representation of all parties (the Labour minority, for instance, has never won a seat) but that could not be expected in constituencies returning only two (in one case three) Members each.

Within the limits imposed by that small number, the success

of the system surely has been conspicuous; we have only to compare Oxford and Cambridge under P.R. with the same two Universities under the old system. Before 1918, both were to all intents and purposes Conservative pocket boroughs: any man whom the party chose to nominate there was certain of election, whether his personal qualities were or were not such as the representative of a University ought to possess. In the eight general elections from 1885 to 1910, only one such nomination was even contested in Cambridge, and none in Oxford. Since the introduction of P.R. in 1918, only one election (1931) in each University has *not* been contested, and the Members include distinguished Independents, such as Sir Arthur Salter, who probably would not have been elected elsewhere. The Conservatives can still win University seats, but only by nominating people who are in themselves worth voting for.

I notice also that Mr. Herbert Morrison, in the printed version of his lecture on "British Parliamentary Democracy", repeats the assertion that proportional representation "tends to foster splinter parties" although he can give no instance of this effect. His French audience must have wondered what country he had in mind, for in France the effect has been the opposite—the splinter parties for which France was notorious before 1945 have become fewer since the adoption of a proportional system in that year.

Yours faithfully,
ENID LAKEMAN

The Proportional Representation Society,
London, S.W.1

BOOKS RECEIVED

The inclusion of a book in this list does not preclude its review in a subsequent issue of Parliamentary Affairs. Any of the books in the list or reviewed on pages 283 to 294 can be ordered through the Hansard Society.

BOYD, ANDREW and WILLIAM METSON (for the United Nations Association).
Atlantic Pact, Commonwealth & United Nations. Hutchinson. 8s. 6d.

BUTTERFIELD, H. *George III, Lord North, and the People, 1779-80.* Bell. 30s.

CAMPBELL, SIR GERALD. *Of True Experience.* Hutchinson. 18s.

CARODOG JONES, D. *Social Surveys.* Hutchinson. 7s. 6d.

FILMER, SIR ROBERT. *Patriarcha.* Edited and with an Introduction by
Peter Laslett. Oxford: Blackwell. 12s. 6d.

GLADDEN, E. N. *An Introduction to Public Administration.* Staples. 12s. 6d.

HAWTRY, R. G. *Western European Union.* Royal Institute of International Affairs. 5s.

HOLLIS, CHRISTOPHER. *Can Parliament Survive?* Hollis & Carter. 9s.

KEPPEL-JONES, ARTHUR. *South Africa.* Hutchinson. 7s. 6d.

MAURA, DUQUE DE, and MELCHOR FERNANDEZ ALMAGRO. *Por Qué Cayó Alfonso XIII.* Madrid: Ediciones Ambos Mundos.

MOODIE, A. E. *Geography Behind Politics.* Hutchinson. 7s. 6d.

PHILIPS, C. H. *India.* Hutchinson. 7s. 6d.

SPEAR, PERCIVAL. *India, Pakistan, and the West.* Oxford University Press. 5s.

SPROTT, W. J. H. *Sociology.* Hutchinson. 7s. 6d.

STANNARD, HAROLD. *The Two Constitutions.* Black. 12s. 6d.

VOIGT, F. A. *Pax Britannica.* Constable. 25s.

BRITISH GOVERNMENT PUBLICATIONS

Most of the British Government publications listed on this page are of parliamentary or constitutional interest. All Government publications, including Hansard for the House of Lords and House of Commons (daily parts, weekly editions, or bound volumes) can be ordered through the Hansard Society.

Boundary Commission for England. Report. (Cmd. 7745.) 1d. Report. (Cmd. 7787.) 2d.

Consolidation Bills, 1948-49. Third Report by the Joint Committee (Representation of the People Bill). (H.L. 29-II, 129-I, H.C. 201-I.) 2s. 6d. Fourth Report (Civil Aviation Bill). (H.L. 29-III, 130-I, H.C. 200-I.) 4d. Fifth Report (Agricultural Holdings (Scotland) Bill). (H.L. 29-IV, 153, H.C. 214.) 6d. Sixth Report (Marriage Bill). (H.L. 29-V, 168, H.C. 232.) 1s. 3d.

Consolidation of Enactments (Procedure) Act, 1949. Memorandum (Marriage). (H.L. 112, H.C. 183.) 6d. Memorandum (Excise Duties in mechanically propelled vehicles). (H.L. 118, H.C. 191.) 1d.

Estimates, Select Committee on. Seventh Report (The Administration of the National Health Services). (H.C. 176, 178.) 4s. Eighth Report (Departmental Replies to the Second Report on the Defence Estimates and to the Sixth Report on Production and Marketing of Opencast Coal). (H.C. 221.) 2d. Ninth Report (Government Hospitality Departmental Entertainment and Official Entertainment in the Armed Forces). (H.C. 237.) 1s. 6d. Tenth Report (Hostels). (H.C. 238.) 5s. Eleventh Report (Agricultural Services). (H.C. 239.) 9d.

House of Commons (Indemnification of Certain Members Act) Act, 1949. (12 and 13 Geo. 6., Ch. 46.) 1d.

House of Commons (Redistribution of Seats) Bill. (H.L. 161.) 4d.

House of Lords Offices. Fourth Report by the Select Committee. (H.L. 138.) 1d.

Justice of the Peace Bill. (H.L. 114.) 1s. Amendments to be moved in Committee. (H.L. 114a.) 1d. Amendments to be moved in Committee (H.L. 114b.) 3d. Amendments to be moved in Committee (H.L. 114c.) 2d.

Kitchen and Refreshment Rooms (House of Commons). Second Special Report from the Select Committee. (H.C. 222.) 2d.

Law Reform (Miscellaneous Provisions) Bill. (H.L. 139.) 2d. Amendments to be moved in Committee. (H.L. 139a.) 1d.

Local Government Boundary Commission (Dissolution) Bill. (H.C. 175.) 1d.

Married Women (Restraint upon Anticipation) Bill. (H.L. 178.) 1d.

National Coal Board. Report and Accounts for 1948. (H.C. 187.) 6s. 6d.

Public Records, Guide to the. Part I: Introductory. (44-5065-I.) 2s.

Representation of the People Bill. (H.C. 173.) 4s. 6d.

Staff Relations in the Civil Service. (63-114.) 9d.

Statutory Orders (Special Procedure) (Substitution) Order, 1949. Draft. (Cmd. 7756.) 3d.

Statutory Instruments, Select Committee on. Minutes of Proceedings. (H.C. 213.) 2d. Minutes of Proceedings. (H.C. 227.) 1d.

Supreme Court Practice and Procedure, Interim Report of the Committee on. (Cmd. 7764.) 1s.

BOOK REVIEWS

The Two Constitutions. By Harold Stannard. Black.
12s. 6d.

Mr. Harold Stannard in the engagingly modest introduction to his comparative study of the British and American systems of Government says that his book springs from a desire to satisfy his intellectual curiosity. "How comes it that institutions which admittedly spring from a common root should stand in such sharp contrast to one another?" He finds, on examination, that the answer to his question is to be found in the fact that "for all its sharpness, the contrast is one of means, not of ends, not even of method". Thus, although his comparison constantly leads him to point out the differences of usage, procedure, terminology and mechanism for which the English student of public affairs must always be watchful when he is viewing the American political scene, Mr. Stannard also finds that the constitutional experience of eighteenth and seventeenth century Britain had survived in the institutions of both countries as a force making for common respect for law and liberty.

This is a welcome approach to the study of Anglo-American institutions, because although it is a healthy instinct which warns us against expecting to find duplications of Westminster and Whitehall underneath the very different skies of Washington, it is also easy to go too far in exaggerating the differences between our two systems. Even the most obvious, and at first sight the most far reaching contrast, that between the written Constitution of the Founding Fathers and the "non-existent" Constitution of the British Commonwealth, can be magnified and misunderstood. As Mr. Stannard cogently points out, the difference signified very little more than that the one was written as a whole in a few months to meet an urgent crisis, and the other represents the accumulation of centuries, in which the written

element has certainly played no insignificant part. Indeed, he points out, between the American Constitution on the one hand and Magna Carta, Bill of Rights, Parliament Act, and the rest on the other, there is a "fundamental resemblance—the need in both countries of the spur of necessity to produce the written word". Thus too it comes about that while both countries revere their Constitution sufficiently to fight—and even provoke a civil war—for the sake of it, they have a common preference for commonsensical adaptation rather than rigid, precedent-bound adherence to the bare letter. Only a widespread ignorance of the flexibility and adaptability of the U.S. Supreme Court could explain the persistence amongst comparatively well-informed English people of the idea that American politics is bound hand and foot to the archaic pillar of an eighteenth century prescription. Mr. Stannard points out that it is an English Lord Chancellor who delivers himself of the pronouncement that

"The law is the true embodiment

Of everything that is excellent.

It has no account of fault or flaw,

And I, My Lords, embody the law."

He might have gone on to quote the American Supreme Court Justice who observed "We live under a constitution, but the constitution is what the Judges say it is." Judicial stubbornness and misplaced zeal have, it is true, reared their monuments on each side of the Atlantic; *Dred Scott* and the *Taff Vale Case* live in the history books as reminders that the Anglo-Saxon respect for the viable cannot always survive the professionalism of lawyers. But it is reasonable for both Americans and Englishmen to interpret the broad movement of their political development as a steady progress in the art of coaxing the river of Change to flow between the banks of Constitutionalism.

If it is true that the political genius of the two nations, for all its differences of expression, is fundamentally the same, it might be expected to reveal its identity most clearly in those features of politics which are least cramped and formalized by law or precedent, namely the great political parties. Yet

it is here that at first glance the differences seem most pronounced. Are we not always brought up to believe that British parties divide on principle and their American opposite numbers on some incalculable, incomprehensible, almost mystic distinction between Republicans and Democrats? Even those who claim to have pierced the mysticism usually come back heavily freighted with cynicism, and tell us that they are merely sectional alliances for the purpose of plundering the public purse. Here again, however, a closer examination will suggest that the range of difference from American Republican to British Socialist is nothing like as wide as theory would have us believe. If Lord Bryce has handed down to us the journalists' observation that the American parties are like two identical bottles, bearing different labels, and both empty, Mr. Stannard very properly reminds us that it was President Lowell of Harvard who observed that "the organizations of both the great nineteenth century English parties were shams, the one transparent, and the other opaque". The truth is that a superficial American cynicism and, one hopes, an equally superficial English form of political priggishness, have converged to propagate the myth that whereas there is no difference between Democrats and Republicans, there is an unbridgeable void between Conservatives and Socialists—at least if the Liberals would only accommodate themselves to this polarity and bow themselves out of the way. This myth has had curious repercussions on the popular theory of the relationship in each country between the political administration of the day and the permanent civil servants. According to it, a change of administration in the United States involves the removal of all civil servants and their replacement by supporters of the victorious party; this, however, is not as serious as it might seem, because since there is no difference between the parties there is also no difference between their attendant administrators. In England, by contrast, an even greater miracle is supposed to ensue by which a body of permanent, high-principled and yet politically colourless civil servants can serve political masters of

opposite extremes without for one moment losing their personal integrity or honest independence of judgment. The truth is, of course, widely different. The day is fast approaching, if it has not already arrived, when the differences between Republican and Democrat will be at least as real as those between Conservative and Socialist, however much the greater size and divergence of the United States may obscure this fact by the wide range of its regional peculiarities. Equally, though a vast expenditure of campaign eloquence will shortly be devoted to proving the contrary, no major party in English politics has shown any persistent disposition to allow an absolute and permanent gulf of principle to separate it from its opponent. Continuity can thus persist throughout changes of administration. This is as true of Whitehall as of Washington. British civil servants can thus faithfully serve successive masters because they know that change will not mean complete reversal of policy. In Washington the days when "to the victor belong the spoils" are virtually over. The huge machinery of American government could no more stand a wholesale eviction of its management every four years than the Ford Motor Company, could survive a complete change-over of its factory hands. The truth is that, faced in so many ways with similar problems, the problems of bigness in government, of reconciling liberty and organization, of transforming government from negative regulation into some degree of positive control, the political genius of the two countries is borrowing increasingly from each other's experience. Underlying much that is different there are common traditions and, most important of all, a range of common ideals.

H. G. NICHOLAS.

*(Mr Nicholas is a Fellow
of Exeter College, Oxford.)*

George Washington: A Biography. By Douglas Southall Freeman. Eyre & Spottiswoode. Volumes 1 and 2. 18s. each.

Jefferson the Virginian. By Dumas Malone. Eyre & Spottiswoode. Volume 1. 21s.

Thomas Jefferson and American Democracy. By Max Beloff. Hodder and Stoughton for the English University Press. 5s.

Autobiography of Benjamin Franklin. Dent (Everyman's Library, No. 316). 4s. 6d.

It is worth pondering that during the eighteenth century the best British liberals, radicals and democrats were the American revolutionary leaders. Washington, Jefferson, the Adams, Benjamin Franklin, Alexander Hamilton—the list of these colonial squires, gentry, and professional men is astoundingly long. And if anyone to-day thinks they were real radicals in the left-wing Continental sense of the French Revolution, let him read any or all of a series of valuable books recently published on these statesmen and uniters of the United States.

Begin, as Americans begin, with George Washington himself. Mr. Douglas Southall Freeman, the indefatigable Virginian editor and biographer of Robert E. Lee, has brought out the first two volumes of his biography of Washington. It has not the glamour, the sweep, and the buoyancy of his earlier biography of a fellow-Virginian, but that is because at no time in his life could Washington compare with Lee in personality (or even—tell it not in Gath!—in integrity), and secondly because these first two volumes only take us from 1732 to 1758 in young Washington's life. But the chief interest in Mr. Freeman's new work lies in its scrupulous scholarship, its original researches, and its floodlighting of the entire Virginia background from the beginnings of the seventeenth century. Here Mr. Freeman could do what would have been out of place in his four volumes on Lee: he could bring genealogy, sociology, economics and politics together to describe, with a wealth of enthralling detail, how "the Old Dominion" became that Virginia from which the Lees, Washingtons, Jeffersons, Henrys, and so many others organized the Revolution. Against this background loom other shapes: the beginnings of "land hunger" in the thinly-settled Atlantic coastal strip (which is all "America" then

was); the casting of Eastern eyes towards the interior, then called "the lands of the Ohio"; the first trickle of Southern trekkers over the Piedmont and the mountains into what is now the lower Middle West. Among them, as a colonial civil servant *pro tem.*, went the young surveyor Washington; and there, on the side, he acquired more lands for himself than he or his family ever owned in Virginia. These two books—rather like Senator Beveridge's classic first volume on Abraham Lincoln—tell us far more about the American beginning, about what was (and therefore is) Americanism, than they do about the subject of their biography. Mr. Freeman's work, in this wider sense, is as exciting as any "wild Western"—which, in a way, is exactly what it is! For until 1758 all America—British North America—*was* a wild West, tempered along its tiny coastal strip by a few beautiful red-brick towns. One day's gallop away were the forest primeval and the Indians.

In the small, intimate red-brick towns were the professional men: the lawyers, on whose work (more than on that of any others) rests the American Constitution and the "American Way" to-day, with its multiplicity of laws, courts, and legal men; or the architects, like Jefferson; or the printers, scientists, traders and writers, like Franklin. Professor Dumas Malone's book is a fitting tribute to Jefferson, who (even more than Washington) set out to rear a great sovereign state upon his own beloved Virginia as a basis. It complements Mr. Freeman's study of Virginia's beginnings. It sets off Jefferson against Washington in quite a revealing way. Washington, the Virginian country surveyor and squire, turns out to have been, as a military man of action in the ensuing Revolution, far wiser than the architect-Governor of Virginia, Jefferson. But here, again, we have only part of a work before us; for Professor Malone has to leave Jefferson when he sailed for France as American plenipotentiary after the Revolution has succeeded, in 1784. The best of Jefferson, another forty years of his remarkably creative life, is yet to come; and if it is just as stimulatingly treated as the first half in the present volume, it will be a book to earmark. For

Professor Malone, like Mr. Freeman, is a scrupulous, unbiased, yet fascinating biographer. His subject lives, and so does the subject's world about him, as we read.

Jefferson left his beloved Monticello, his red-brick and whitestone quoins of Virginia's lovely houses, to replace in Paris in 1784 one of the most remarkable men of all time: Benjamin Franklin. This man, a British colonial from Boston, settled modestly in trade in "the city of brotherly love", Philadelphia, practically saw the whole of the great eighteenth century through: 1706 to 1790. In his writings, scientific researches, political statesmanship and diplomacy he was well-nigh as versatile as Leonardo da Vinci, and on the whole far sounder. He, too, had a big hand in the Revolution; but he did not particularly want to! His preference was for a continuation of the link with Britain (at France's expense) in order to rule the whole of North America and keep it British; and he did not abandon this view until the very eve of revolution itself. The ever-ready Everyman's Library have therefore served us well in producing at this time Franklin's famous Autobiography in a new edition, with the valuable addition of an index, and with a discerning introduction by the editor, Mr. W. Macdonald, who has also added an account of Franklin's later life. This little book is, in such small compass and at four-and-sixpence, the best introduction to Franklin and his work that I have seen.

And that brings me to the real theme of this all-too-brief review. It can best be summed up by yet another review: this time, of Max Beloff's original contribution to the successful *Teach Yourself History* series which Mr. A. L. Rowse is so ably building up. Mr. Beloff's study of "the great democrat" leads up to a last chapter, which is a kind of coda: "the Jeffersonian legacy". In it, he poses the questions which all these books pose to us to-day, and he sketches replies to them. What ferment, what peculiar germ, was it that went to work on these very young, not particularly "educated", colonial gentlemen in Virginia or Pennsylvania between 1725 and 1775? What fashioned their aims, what lay beyond and behind the revolution they made? In Mr. Beloff's last

chapter, we get as good an answer as I have yet seen, by way of hindsight. He looks at their legacy, as it unfolded throughout the nineteenth century and up till to-day; and he thereby enables us to stitch together the materials we obtain from the other books I have mentioned here.

"The American Way", to-day, is signalized by three things: equality of opportunity (for 90 per cent); emphasis upon individual enterprise; and direct pressures upon Government through democratic institutions (including "lobbies" and "pressure groups"). All this can be traced back to tidewater, up-country, pioneer beginnings; to Virginia first, and then the opening-up of the great Mid-West; to the struggles between "a strong power at the centre" and the men who stood for "States' Rights"—the issue between Jefferson and Hamilton, with Washington uncomfortably straddling the middle of the seesaw; to hatred of imperialisms, aristocracies, and subjugations of man by man; and, lastly, to a real fear of what both Jefferson and Lincoln long after him termed "mobocracy"—unbridled, unchecked, unbalanced tyranny by a majority of votes over all minorities. Hence the "checks and balances" of American life. Hence, too, the inner contradictions and stalemates, whether on domestic or foreign policy. The emergence of America as the greatest Power the world has ever seen, within one generation, has meant acute growing-pains as it bursts its old bonds.

Yet the spate of books on America's beginnings is not only valuable to us in interpreting the America of to-day. It is valuable in helping us to interpret to ourselves a lot of our own current problems in Britain and Europe. Of these, federation for survival, the safeguarding of real democracy, and the preservation of individual freedoms are not the least.

GRAHAM HUTTON.

(Assistant Editor, The Economist, 1933-8; Director, British Information Services, Chicago, 1941-5.)

Presidential Government in the United States. By C. Perry Patterson. The University of North Carolina Press (London: Cumberlege). 21s.

The President: Office and Powers. By E. S. Corwin.

New York University Press (London: Cumberlege). 35s.

One of the major differences between Great Britain and the United States of America is that whereas in this country we are used to thinking of our government as omniscient and to concentrate almost exclusively upon policy, Americans can hardly consider policy without discussing also the instrument by which it is to be made effective. This may explain in part the greater prominence given to "political science" in American academic curricula, and also the number of suggestions for radical constitutional reform that have lately made their appearance.

If less is actually done than all this intellectual ferment might lead one to expect, the reason is not far to seek. "The average American" writes Professor Patterson towards the end of his provocative, uneven, repetitive, learned and crotchety book, "does not understand how the government works, and it is too complex to be explained to him from the stump. He knows, however, that he wants a President, a Congress of two houses, and a Supreme Court". Unlike other reformers, Professor Patterson wants to give him all this, and heaven too.

The diagnosis of the evil is what might be expected from a Jeffersonian democrat gone sour. The American political system under the pressure of "science" (i.e., industrialism) has departed further and further from its original principles. The states have been swallowed up into a centralized system of government. The Court has in accordance with its inevitable tendency to follow, if at a distance, the dominant trend of politics, abdicated its function of judicial review except where it is necessary to prevent State action from interfering with Federal policies. Finally and most serious of all, the President, combining both executive and political authority, has taken over the political leadership that Congress cannot under its present organization hope to exercise. Under the shadow of his authority a vast complex of commissions and boards, enjoying delegated authority and combining in defiance of the constitutional principle, judicial and legislative with executive functions, now enter into every daily activity of the American

citizen. The whole of this machine can only be held together by "politics"; in other words by political patronage and intrigue on the part of the President. Thus the Government has become a "government of men not of laws", in the old phraseology, while at the same time no rational principle can be introduced into the selection of the men who are to wield this great power. This, argues Professor Patterson, is the very essence of totalitarianism.

The arguments, largely historical, by which Professor Patterson justifies this exposition are varied and often ingenious. He has however the non-historian's weakness of quoting isolated opinions of other authorities with insufficient attention to their temporal context.

Of greater originality are his positive proposals. The only way out, he argues, is to bring the constitutional working of the system closer to its actual working, that is to say to produce a system of responsible government through the overt recognition of the two-party system in Congress. What he proposes, in brief, is a political Cabinet composed of the leaders of the majority party in the two Houses who will be responsible for policy and legislation—a sort of super-steering committee which will restore to Congress the powers of which its committees and their chairmen have robbed it. The floor of Congress, like the floor of the House of Commons, will become the real political arena on which reputations are made or lost. Where the minister is in one House, a vice-minister will speak for him in the other. Questions can be asked in both. These Cabinet-members will not supersede the present members of the President's Cabinet who would remain as the administrative heads of departments of which the new Congressional Cabinet-members would be political heads.

There is no question of introducing a power of dissolution to deal with deadlocks nor of altering the constitutional terms of President and Congress. If a different party has a majority in the House from that having a majority in the Senate, the result would be a coalition Cabinet. This, Professor Patterson rather too readily assumes, would be a safeguard against deadlocks.

It is perhaps a pity that Professor Patterson has not spent more time examining his proposals in the light of experience of responsible government elsewhere, even if this meant sacrificing some of the space he devotes, for instance, to comparatively well-known aspects of the history of the Supreme Court. If he had done so, he might not have been content with stating, in answer to obvious possible objections that "of course, bicameralism, federalism, and judicial review exist in all the units of the British Commonwealth except in Great Britain, yet they all have cabinet government". It is not quite as simple as that.

Professor Corwin's book is a very different affair. It is the third edition of a work that since its appearance in 1940 has been recognized as the outstanding study of its subject. He has now added to the text discussions of the important developments of the war-time powers of the Presidency under Roosevelt, and of other constitutional topics, including the new role of Congress in international relations in recent years and the question of relations between Congress and government servants raised by the "loyalty" issue.

Like Professor Patterson, however, he sees the crux of the problem of American government to lie in the relations between President and Congress. This is really, as he points out, two problems: "first, the problem of bringing presidential power in *all* its reaches under some kind of institutional control; secondly the problem of relieving presidential leadership in the legislative field of its excessive dependence on the accident of personality and the unevenness of performance which this involves". His solution is again in essentials a similar one and involves no constitutional amendments. "*It is simply that the President shall construct his Cabinet from a joint Legislative Council to be created by the two houses of Congress and to contain its leading members.* Then to this central core of advisers may be added at times such heads of departments and independent agencies as the business forward at the moments naturally indicates." This, of course, is very close to the suggestion put forward for a joint executive-legislative Cabinet in Mr. Thomas K. Finletter's *Can Representative Government do the Job?*

At first sight such proposals do little more than make formal acknowledgement of the fact that co-operation with Congressional leadership is a pre-requisite for any successful programme on Presidential initiative. What it does not seem to do is to tackle the reasons which make Congress normally so recalcitrant. Professor Patterson may be alarmed at the overwhelming accumulation of power in the hands of the President; foreign observers are more likely to marvel at his impotence. Professor Corwin's breezy assumption that party politics is all a lot of nonsense anyhow, and that the job is essentially the practical one of "*nation-keeping*" does not get us much further forward. Nor is it easy to see how such suggestions contribute to the de-personalizing of executive power that Professor Corwin regards as so essential.

But such questions are best left to Americans themselves. For the English student of politics, the essential thing is the complete and realistic picture that Professor Corwin gives of the position of the American President—that office upon the holder of which so much has only recently depended, and may again depend.

MAX BELOFF.

(Mr. Max Beloff is Reader in the Comparative Study of Institutions, Oxford University, and a Fellow of Nuffield College.)

A Survey of American Government. By Harold Zink. Macmillan. 24s.

Professor Zink attacks his subject at a level which he assures us is above that of an undergraduate course at an American university, but which would hardly be likely to give a British undergraduate any difficulty. In addition to discussing federal, state, and local governments in all their branches, he dabbles in the less conventional waters of "pressure groups" and public opinion. The book has the merit of being up-to-date, with a comprehensive if necessarily sketchy discussion of war-time developments in American governmental practice. It should be a useful volume for quick and ready reference.

DAVID C. WILLIAMS.

(Mr. Williams is the London Representative of Americans for Democratic Action.)

PARLIAMENTARY AFFAIRS

THE JOURNAL OF THE HANSARD SOCIETY

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THE HANSARD SOCIETY, 39 Millbank, London, S.W.1

THE HANSARD SOCIETY

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HANSARD SOCIETY NEWS

by STEPHEN KING-HALL

Chairman of the Council and Honorary Director

TWO events of considerable importance have occurred in the history of the Society since the last issue of *Parliamentary Affairs* went to press. The Annual General Meeting on 17th November, 1949, was followed on 13th December by the official opening of Hansard House. The speeches made on that occasion were recorded and are summarized on pages 300/6 of this issue. The Council greatly regretted that accommodation difficulties made it impossible to invite the general body of the members to the ceremony.

The opening ceremony was brief and to the point, and the names of the guests of honour are a tribute to the esteem in which the work of the Society is held by the leaders of all the political parties. The limited accommodation of Hansard House was filled to capacity by the other guests who represented both Houses of Parliament, the Commonwealth, a number of foreign countries, and a cross-section of British public life.

During the period now being reviewed the Society entertained for a fortnight another all-party group of German Parliamentarians. With the coming into force of the new German Constitution, these visits of German politicians, of which the one mentioned above was the seventh, have been suspended. Many appreciative tributes have been received by the Council from our German guests and from the British authorities in Germany testifying to the value of these visits and to their usefulness to the Germans during a period in which the German politicians were preparing to establish the Bonn Parliament. It is expected that later on in the year I shall be able to accept an invitation to visit Bonn with the Assistant Director and discuss with German Parliamentarians the development of our work in Germany.

The Youth Conferences held by the Society in London have become modestly famous, and it is now intended to hold similar conferences in some of the principal provincial towns.

At the beginning of December an experiment was started of holding small informal meetings at 6 p.m. once a month at Hansard House for members and their friends. Two meetings have so far been held and were well attended. The first was addressed by Professor W. E. Binkley, who spoke on "Must America Remodel its Government?" The second should have been addressed by Mr. R. W. G. Mackay, M.P., but in his unavoidable absence abroad Sir Frank N. Tribe, K.C.B., K.B.E., Comptroller and Auditor-General, spoke on the subject of "Parliamentary Control of Public Expenditure". Further meetings have been arranged as follows:

- | | |
|------------|---|
| 6th March. | Professor W. A. Robson on "Parliament and the Public Corporations". |
| 3rd April. | Film Show. |
| 1st May. | Captain J. D. Lambert on "The Irish Party in the House of Commons". |
| 5th June. | Mr. R. W. Perceval on "The Origins of Parliamentary Procedure". |

The Imperial Relations Trust has made a grant to cover the cost of supplying to all University and College Libraries in the Commonwealth sets of some of our publications.

Among the forthcoming publications of the Society are two pamphlets by Miss Kathleen Gibberd called *Questions on Parliament* and *Answers to Questions on Parliament*. These pamphlets have been specially designed for those who conduct "Civics" and "Current Affairs" classes. The first pamphlet contains a series of 100 questions on Parliament and the second pamphlet contains the answers. The pamphlets cost 6d. each, but special terms can be arranged for bulk orders from schools and other institutions.

A 16 mm. sound-track film of the opening of the Canadian Parliament is now in the possession of the Hansard Society. It can be hired for display although a deposit (returnable) will be required. Further information can be obtained from the Secretary, the Hansard Society.

Many members of the Hansard Society will know of the Fulbright Agreement under which sterling acquired by the American Government by the sale in the U.K. of surplus war stores is used to finance an Anglo-American educational programme. At present some 160 American scholars are in receipt of awards under this programme and are studying at British universities. Many of them are working in the parliamentary field, and the Hansard Society has gladly agreed to a proposal of the U.S. Educational Commission in the United Kingdom that the Society should give what help it can to these scholars. At the same time it seemed right that members of the Hansard Society should have an opportunity of meeting these American visitors. They are working in different parts of the country, including the following universities: Aberdeen, Aberystwyth, Birmingham, Bristol, Cambridge, Durham, Edinburgh, Exeter, Glasgow, Liverpool, London, Manchester, Oxford, St. Andrews, and Sheffield. Any member of the Hansard Society who would like to be put in touch with any of these American scholars should write to the Assistant Secretary, United States Educational Commission, 55 Upper Brook Street, London, W.1.

The small but growing library of the Hansard Society contains approximately 1,000 volumes excluding pamphlets and the complete set of Hansard. We realize that the usefulness of a library greatly depends upon it being scientifically catalogued and arranged and that this is a job for experts; furthermore, that this job should be done at the earliest possible moment before the library becomes too large. Is there amongst our members or their friends a professional librarian, retired or otherwise, who would be willing to call at Hansard House, 39 Millbank, and advise us upon this problem?

I report the following donations as an encouragement to others: K-H Services Ltd. (*National News-Letter*), a seven-year covenant of £500 per annum; Mr. W. Greville Collins, for organizing Provincial Youth Conferences, £500; a member who wishes to remain anonymous, for the Hansard House Furnishing Fund, £100; Mr. Coleman of New York, for the general work of the Society, £100.

THE OFFICIAL OPENING OF HANSARD HOUSE

The Official Opening of Hansard House, 39 Millbank, Westminster, took place on 13th December, 1949. The guests of honour were His Grace the Lord Archbishop of Canterbury, the Rt. Hon. the Lord Chancellor, the Rt. Hon. the Prime Minister, the Rt. Hon. the Speaker of the House of Commons, the Rt. Hon. Viscount Samuel, and the Rt. Hon. Oliver Stanley, M.P. The following is a summarized report of the speeches.

Commander King-Hall:

"On behalf of the Council and members of the Hansard Society, I thank you all for the honour which you have paid us in coming here today. A number of members of the Society who are unable to be present have sent us messages. . . . These will be reproduced in the official report of our proceedings. . . . Emerson wrote that we ask for long life, but it is deep life or grand moments which signify. This is a grand moment in the young life of the Hansard Society. I shall say no more than to observe that the magnitude *and* the significance *and* the grandeur of that moment will only be known in the distant future, when the quality and the influence of the work of this Society for the free way of life through the medium of parliamentary institutions takes its place in the perspective of history. . . ."

The Lord Chancellor:

"I have to extol the merits of the House of Lords in a time no longer than that allowed to the Speaker to extol the merits of the House of Commons, and that is obviously an impossible task. I shall content myself with saying very little. I earnestly wish success to the great work which the Hansard Society is doing. We pride ourselves on living in

a democracy, and, for the proper functioning of a democracy it is necessary that the electors shall take an intelligent interest in what is going on in political life. I believe that our House, which is in no sense a rival to 'the other place', does perform a very useful function alike in the quality and character of its debates. I wish that a knowledge of those debates and of our proceedings was more widely diffused amongst the people, and this would surely happen if only the people wanted this information. Recently we had a very interesting discussion, illuminated by very remarkable speeches. My own was one of them. It was on the question as to whether we should or should not afford a passage to the Parliament Bill, and I looked with interest at an organ of the popular press the next morning to see what was said about the debate in general and my speech in particular. I regret to tell you—and this is a solemn fact—I regret to tell you that in that paper there was no reference whatever to the fact that we had even had a debate. It was the day when the papers were reporting a case which made reference to 'million volt kisses', and the report of this case completely crowded out the information about the House of Lords. I am not making the slightest complaint about the press—not the slightest. The press, I have no doubt, give the public what the public want, but if only the public wanted to hear more of what takes place in the way of sensible discussions in our House and in 'the other place', I am sure we might have crowded out the detailed report of the case in question. Therefore I earnestly hope that the Hansard Society will succeed in stimulating the interest of the public in the proceedings in Parliament, and if they succeed, then our debates will be more adequately reported in the press. After all, democracy, which involves a large measure of tolerance, is really based upon government by discussion; and if discussion is to be valuable the people must be interested in what is taking place. The Hansard Society is trying to bring this about, and therefore I believe that the Hansard Society is performing a most useful and valuable work on behalf of democracy, and I give my support to its work."

The Prime Minister :

"It is, I think, characteristic of our system of government and our democracy that I should be here today in a dual capacity—as a party leader and as Prime Minister. Sometimes, of course, those positions might seem incompatible, but today in welcoming the activities of the Hansard Society, I can welcome in both capacities. Not that I would suggest that the Government should support the Hansard Society financially. I am not authorized by the Chancellor of the Exchequer to do any such thing, and I am quite sure that the Hansard Society will want to keep itself entirely and completely independent. But speaking from the Government's point of view, I think it is essential that the people should know as much as possible of what goes on in Parliament. From the party point of view, I take the same line. And this is a thing, I am quite sure, where Members of all parties are united, because there is not a Member in either House who would not like to have a very full report of his valuable contributions to debate circulated far and wide. But the Hansard Society's activities extend not only to the people of this country but to the people of the world. I am sure that the more other countries know of what we are doing, the better, because it is not very easy for them to understand our particular system. Our system of democracy, our curious constitutional methods, are not, I think, really an exportable commodity. It is true that our system can be reproduced by people of our race in other countries, but if you try and export it to other countries, it is apt to suffer a sea-change, mainly because all political institutions must be suited to the particular genius of a particular nation. But it is important that they should try to understand how ours work, and I am quite sure therefore that the Hansard Society is doing very valuable work. What gives life to our forms, our habits, and our customs is the spirit of democracy. And at no time, I think, in the history of the world was it more important that the spirit of democracy should be emphasized, because there are grave dangers today, and to all of us who believe in the freedom of the human spirit, democracy is the great defender."

The Speaker :

"I seldom speak and therefore I have very little to say this afternoon. Commander King-Hall kindly sent me some notes and one note was that I was the spokesman for the House of Commons. Well, I am sometimes, but only when they authorize me. I have not been particularly authorized today, but I think I can say on behalf of all Members of the House of Commons that we give our hearty support to the Hansard Society. I think I had better say almost all, and I should say 99½ per cent., because I did notice in some paper the other day that apparently somebody, I do not know if he is a Member of Parliament or not, did not seem to approve. But I am quite certain that is not the opinion of anybody who knows the House of Commons really at its heart. I was gratified that the Lord Chancellor was here, and I hope that the Hansard Society will support his Chamber as well as the House of Commons. . . . There is one other thing I would like to say, knowing how many big queues there are outside the House of Commons of strangers trying to come in to hear our debates. That shows there is a tremendous interest in what is happening in Parliament. The public get very poor seats, very often they hear very little, but always there is this long queue outside of people taking an interest in the proceedings of our House of Commons. I think that is a very good sign, but what they really need more than anything else is to be instructed about our procedure and about what actually happens from day to day in the House. . . . My presence here as Speaker of the House of Commons is to say that I am quite certain that I can speak on behalf of a very large majority of Members of the House of all parties that we wish well to this Hansard Society."

Viscount Samuel :

"I have been lately engaged, in the House of Lords and elsewhere, for example in a deputation to my friend, the Lord President of the Council now sitting by me, in urging the claims of voluntary organizations. I think the nation does not fully realize the important part played in its life by

voluntary organizations, standing between the individual and the state. Our great Churches, Universities, institutions like the National Trust, associations of all kinds—industrial, professional, athletic, scientific, artistic and political—all these are of the very tissue, the living tissue of the nation. To these institutions recently another has been added, the Hansard Society, which will take rank, I have no doubt, as one of these permanent and most useful voluntary institutions. It has developed very rapidly. It has collected widespread support, because it fulfills a need. . . . The politics of today is the history of tomorrow, and we may say that *Hansard* is history's ear already listening. And politics for Members of Parliament is an arduous task and complicated. The House of Lords is on a different footing. We have not got the claims of constituents to consider. It has been well said that a Peer's constituency is under his own hat. But the Members of Parliament in general have the constant claims of their constituents and many other arduous duties. Gone are the quiet, placid days when Samuel Pepys could be elected a Member of the House of Commons for the Castle Rising constituency in Norfolk by 29 votes to 7. This Society helps to give Members information, and to make suggestions that may assist them in their work. And on the other hand, it shows Parliament to the world, not only to our own electorate but also to foreign countries anxious to study the workings of the most successful democracy on the globe. It has been said that 'a nation is the average of its people urged on by the few'. Those few are the pioneers, the founders, the leaders of our voluntary associations, and here in the case of the Hansard Society we have, as Chairman and Honorary Director, one of the most valued, and one of the most efficient of that few, a pioneer of this Society and its most active leader. I think we should take this opportunity of expressing our gratitude to Commander King-Hall for the devotion and the energy which he has given to this Society. It is he more than any other one man who has given it its present scope and importance and we trust that he will continue to lead it to the greater developments which assuredly await it."

Mr. Oliver Stanley:

"There is this among other differences between me and the other speakers. They are what I might call players in their own right. I am only a substitute, one of those unfortunate people who, you remember, are allowed the work of fielding but not the pleasure of batting. . . . I am here, however, as substitute for a man whom unfortunately it is impossible to be a substitute for, and that is Winston Churchill. I have, though, a letter which he has asked me to read to this meeting:

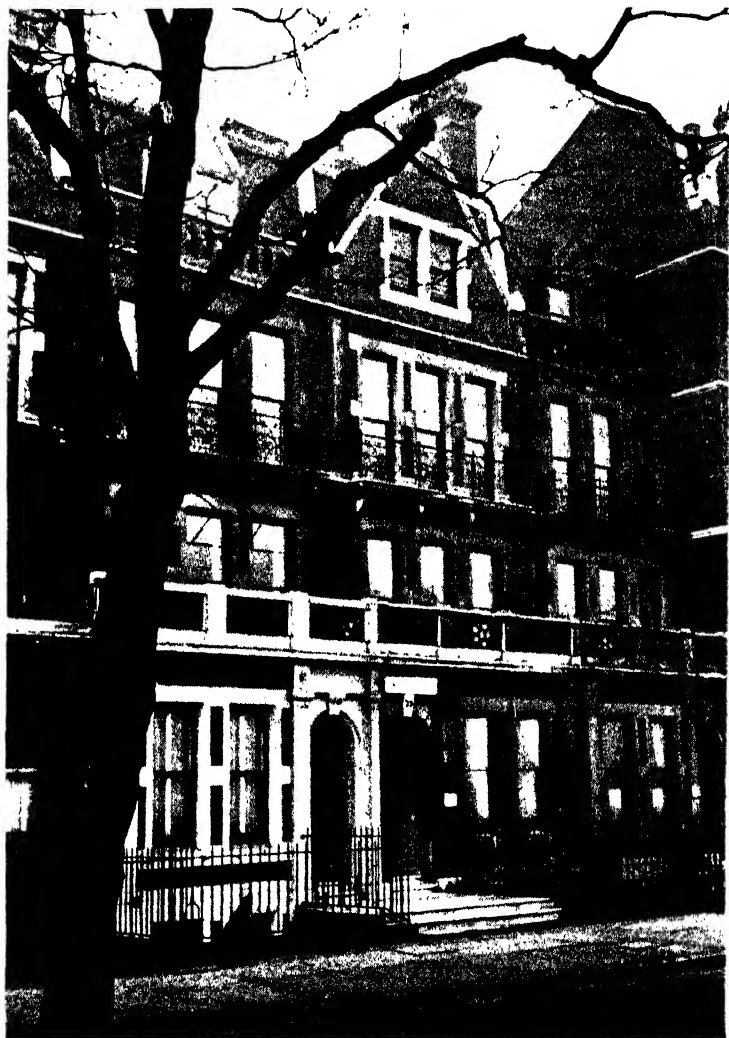
'Please express to the Chairman and Council of the Hansard Society my great regret at being unable to be with them on the occasion of the opening of their new headquarters. As a member of the Society, I have followed its work from the earliest days with great sympathy and admiration. I hope it will go forward from its new headquarters and receive from men and women of all parties and of none the support it so fully merits.'

Well, Mr. Chairman, you, rightly doubting the ability of a substitute, were kind enough fully to map out the remaining minutes at my disposal. I have first of all to touch lightly on the origins of the democratic spirit both in this country and in the United States, and at the same time to make some critical comparison between the way in which the community of spirit has been translated into a difference of constitution. I am then to proceed to give a favourable comment on the December issue of the Hansard Society's Journal. . . . And thirdly I have to draw, I gather in a jocular spirit, some comparison between the statutory impermanence of the House of Commons and the privileged stability of the Hansard Society. And in case I should be at a loss, I was even supplied with the appropriate jokes. This opened out a very pleasant vista to me, until I saw at the bottom of the paper the ominous notice that within six minutes of my rising to my feet, the Lord Chancellor and the Speaker would have left the building. I hope, therefore, you will permit me to do what in my younger and more unregenerate days I might have described as ignoring my riding orders, and concentrate merely on one

point. It does seem to me that the real purpose of the Hansard Society is to impress, not only upon this country but upon peoples throughout the world, that the real meaning of democracy lies in its spirit and not its form; that it is perfectly possible for people to enjoy this community of democratic spirit and yet enjoy it under wholly different forms, just as it is quite possible for people to enjoy forms which are not far dissimilar from ours and yet have no content whatsoever of the spirit that really makes democracy. That is a lesson which to me is of particular importance. As an ex-Colonial Secretary, I have had the privilege of starting some of these vast territories upon the road to what we call democratic self-government and now, under a new but perhaps transient dispensation, I still have the privilege of watching their progress, always with interest, sometimes with hope, sometimes with anxiety. But I am perfectly certain that to those millions of people striving towards this goal on which we all agree, you, Sir, and your Society have an important lesson to teach, and that is this lesson: let them look to the spirit and not so much to the form. . . . I am rather, I am afraid, echoing the Prime Minister, a task which I do not often find myself doing, when I reiterate what he said, and that is that peoples all over the world, provided that they grasp the essentials of the spirit, should not be too anxious to copy the forms of others. Rather let them do as we do and allow the spirit of democracy, the feeling of freedom, of liberty and the rule of law, develop institutions fitted to their own character, to their own traditions, to their own design. . . . That is the part of your work that I regard as perhaps the most important, and it is because of that that I offer to you, not only on my own behalf but on behalf of my party, every success for your future."

Commander King-Hall:

"I feel now entitled to declare that Hansard House has been most thoroughly opened, and I shall adjourn the proceedings until 1959 when our lease expires and by which time I know we shall require larger accommodation."



Hansard House, 39 Millbank, Westminster, London.



This illustration forms the frontispiece to *Journals of the Parliaments of Queen Elizabeth* by Sir Simonds D'Ewes, and is thought by some to show Queen Elizabeth giving the Royal assent.

HENRY VIII AND THE ORIGIN OF ROYAL ASSENT BY COMMISSION

by R. W. PERCEVAL
(*A Clerk in the House of Lords*)

IN the Statutes of the thirty-third year of King Henry VIII there stand, at Chapter 21, two brief declaratory sections, asserting that the giving of the Royal Assent to Bills by Commission is and always has been, and always will be, as good as the giving of it by the King in person. The two clauses are part of an Act for the Attainder of Queen Catherine Howard and other persons, which is not printed and was not even entered at the time on the Statute Roll. I think that the curious story of these clauses, from which our present periodical Commissions for giving the Royal Assent to Bills draw their authority, is worth telling both for its own sake and for the sense it gives of the atmosphere of Parliament under Henry VIII.

On Monday 16th January, 1542, Parliament was opened. The Lord Steward, says the Lords Journal in measured and sonorous Latin, after hearing the roll of Lords and Commons called, "repaired to a different Position; and the rest of the Peers, each in their Scarlet Gowns (which they call Robes of Parliament) disposed themselves in their due Places, to await the Royal Advent. When they had all taken their Seats, and the Commons were ready outside the Hall, behold the King's Majesty, robed in Purple, came with splendid Step through the midst of the Hall, and, as with impressive Dignity the whole Assembly arose to greet him, mounted and took his seat upon the Throne. . . . Then the Lord High Chancellor, a man of Eloquence and Erudition, with equal Brilliance and Grace, delivered to the Company a Homily, that each of them there present should consider

with himself what a Prince they had; of what Goodness, and Wisdom; of what Circumspection and Foresight; of what Happiness and Good Fortune in all that he touched. And as often as he mentioned (as he often did) the King's Majesty in his Speech, all with one accord bowed themselves almost to the Ground, in Acknowledgment of the Truth of all that he said in Praise of the King. . . . The Lord Chancellor's Speech was of such Prolivity, as neither to admit of being Written Down in Three hours, nor Read in One:¹ so that the Parliamentary Clerks, being at the time distracted with much other Business, were scarce able to reduce to writing an Abridgment thereof; which, however, in discharge of their Office, they have here appended" (and I have omitted).

At the end of the Abridgment, which itself is by our standards fairly lengthy, the Lord Chancellor breaks off with the reflection that "Human Nature is an ingenious Contriver of Evils for which there is no Legal Remedy existing, and for which new Laws are therefore required; in making which, the Circumstances of the Crimes and the Qualities of the Criminals are pre-eminently to be borne in mind. As, for instance, a Blow struck by a Friend or a Kinsman is weightier than one from the Hand of a Foe, so is the crime of Treason to be regarded the more seriously . . ." and there the record breaks off, but we know that the sense of the next piece must have been "when it occurs in the bosom of the King's own family". For Henry's newly-wedded Queen, Catherine Howard, had just been taken in adultery, and Parliament had been summoned in order that the King might employ against her his favourite weapon for striking down the great—Attainder. For this, accordingly, Parliament prepared itself.

But it was a delicate business, and there were one or two false starts. After two days spent in formal business, a Bill of Attainder against the Queen and certain accomplices was introduced and read a first time in the Lords on the 21st January; but then Henry had misgivings, and for four sitting days the matter hung fire. On Saturday the 28th the Lord

¹ I wish the Clerks could make such entries in the Journals to-day!

Chancellor cautioned the Lords against undue haste in proceeding with the Bill: they should remember that the accused was a Queen; and he thought on the whole it would be best if she were interviewed by a Joint Committee of Lords and Commons, to fortify her womanish timidity, assist her in the preparation of her case, and remind her that the King was as favourable as the Law was fair to her (which, unfortunately for Catherine, was quite true). This proposal was agreed to by the House.

But over the week-end the Privy Council altered course again. "The Council had put off the proposed interview with the Queen", announced the Lord Chancellor on Monday the 30th, "because one or two things had occurred to them of no small importance, which required to be put to His Majesty, or rather thrashed out with His Majesty. They thought His Majesty ought to be invited to consider, with his usual sagacity, that the balance of human affairs was mutable and unstable; that Nature was corrupt and frail; that all were subject to misfortune, none were completely happy; and that he should therefore vouchsafe, considering that the welfare of the whole Kingdom depended on him, to free himself by such reflections as these from all anxiety and solicitude." And further that the Bills of Attainder should be proceeded with, and should receive the Royal Assent without delay, not as in former Parliaments from the King's own mouth, but by Letters Patent, "lest the repetition of so grievous a Story, and the recital of so infamous a Crime, in the King's presence, might reopen a Wound already closing in the Royal Bosom". A committee was therefore appointed to put these points to the King. Next day it was announced that His Majesty had "with great Clemency, and unexampled Humanity", agreed to them all, and that, "although the Law forbade open discussion of the shamelessness of Queens, the King had further been graciously pleased to permit freedom of speech on that subject, so long as it proceeded from a Good Zeal and not from Malicious Intent". He had informed representatives of the House of Commons to the same effect, and had taken the opportunity at the same time to lecture both Houses on

their failure to show a proper team spirit in legislation, whereby several valuable Bills had in recent sessions been lost.

A week later, accordingly, on the 6th of February, a new bill to attain the Queen and others was read a first time in the Lords. It had a second reading on the 7th, and was read a third time and sent to the Commons on the 8th. On the 11th it was returned from the Commons, agreed to; and that same day the Lord Chancellor produced in the House of Lords a bundle consisting of this Bill of Attainder, a bill dealing with lunatics convicted of treason, and the King's Letters Patent giving the Royal Assent to both. All these documents were tied together with a parchment tape, which passed through a slit at the bottom of them and bore the Great Seal. This bundle survives in the Victoria Tower, and I have it before me as I write. The Letters Patent are very hurriedly written, in English, and, though more verbose, are in substantially the same form as the present Royal Commissions for giving the Royal Assent to bills. The two bills in the bundle are much more carefully and neatly written out; the one on lunatics calls for no comment; it is a normal sort of reform in the administration of the law and is printed in the Statutes at Large, 33 Henry VIII, cap. 20. The Bill of Attainder, on the other hand, has, buried in the midst of two square feet of tiny handwriting, the two clauses printed in the Statutes as chapter 21 of 33 Henry VIII. They declare that a Royal Assent given by Commission is and ever was, and ever shall be too, every bit as good as Royal Assents given in person, any usage, law, or custom of Parliament to the contrary notwithstanding.

This impressive-looking bundle of parchments was displayed by the Lord Chancellor to the Peers, who after some debate resolved to summon the Commons and "give to the said Bills the Force and Authority of Law in the presence of both Houses and of the whole Council of Parliament: which was done". And so for the first time the Royal Assent was given in writing and in the middle of the session—for hitherto, of course, the King had never signified his assent to bills until just before the dispersal of Parliament.

Various points of interest emerge from this curious story. In the first place, of course, the horrible hypocrisy of the whole episode needs no emphasis. Henry VIII displays himself as Hitler and Louis XIV rolled into one: not an attractive combination. There was no doubt, of course, of Catherine Howard's guilt; but as a mitigating circumstance in her favour it should be remembered that both England and Henry longed passionately for a royal heir male, stronger and more likely to survive than the sickly young Prince who was later Edward VI. Henry had been through four wives already in the effort to found his dynasty securely; and without condoning Catherine's fault, we may at least say that in her case the motives for adultery were unusually pressing: if she produced a male heir, her position was assured; if she failed to do so, it was fairly obvious, from the history of her predecessors, that she would be got rid of; and that same history did not suggest that the King's previous failure to beget a satisfactory heir had been the fault of his wives.

So much for the moral side of the transaction. On the legal and historical side, it presents some curious anomalies. In the first place, Parliament, in adopting the new procedure in this way, was as it were lifting itself up by its own bootstraps. For the Act authorizing the new method was itself passed by the new method—a proceeding which cannot have left the lawyers happy. It is true that the clauses relating to the Letters Patent were in form declaratory—they purported to be merely a statement of existing law. But they specifically admit that what they enact is contrary to the custom of Parliament; and if Henry VIII had not been so absolute a monarch, and his Parliament so subservient, such a change could probably not have been made, at least without an enabling Act passed in the old and proper form.

And why, if it was necessary and right to put these two declaratory clauses in the Act of Attainder, should they not have been put in the other Act passed at the same time—the Lunatic Act? Both Houses seem to have agreed beforehand that the Act of Attainder should be given the Royal Assent by Letters Patent, but there is no record of any such agreement

for the Lunatic Act. We cannot escape the conclusion that, whichever way it is looked at, this first Royal Assent by Commission was a very high-handed proceeding.

Historically, too, the transaction is puzzling. Henry and his Council seem to have been aware that what they wanted to do was contrary to constitutional usage; and so they inserted in the Bill of Attainder a clause asserting that their proposals were, and always had been, quite legal and proper. But if so, why bother to say so? It is perhaps worth investigating for a moment just how far Henry was deviating from the constitutional practice of his predecessors; and after that we shall trace the evolution of Henry's hasty expedient into the regular practice of to-day.

The Royal Assent had, of course, been given otherwise than by the King in person before. During the long infancy, and subsequent mental incompetence, of Henry VI, and the absence in France of Henry V, it must have been given by the Protector of the Realm, appointed to wield the King's powers during his absence or incapacity. But there was a difference between such cases and that of the attainder of Queen Catherine. Protectors had exercised all, or nearly all, the King's powers inside the kingdom, and had done so continuously until relieved of their office. Henry VIII wished merely to exercise by letter one of his functions on one occasion only; he did not (as is now done) appoint Commissioners to sit in front of his Throne and take his place: he simply gave his consent in writing instead of orally, for this occasion only. He possibly had no intention of doing it again, or making it a regular thing, for he came down in person to Parliament six weeks later and personally passed a good many Bills. But in 1543 Parliament was prorogued, and the Royal Assent given, by a Commission to be declared and notified by the Lord High Treasurer, the Duke of Norfolk: yet in 1545, Henry prorogued in person. In 1547, he gave his consent by Letters Patent on his death-bed to a Bill attaining the Duke of Norfolk and his son, the Earl of Arundel.

The following table shows the number of Commissions from 1547 down to 1770:

<i>Year</i>	<i>Number of Commissions</i>
1586	1
1620	1
1625	1
1642	9
1643	5
1662	1
1663	1
1668	1
1702	2
1707	1
1708	5
1709	1
1710	4
1711	2
1712	6
1748	1
1750	1
1754	1
1755	1
1756	4
1758	6
1759	4
1760	6
1764	3
1766	2
1767	2
1768	3
1770	9

From this table it will be seen that, during the two hundred years from 1550 to 1750, the giving of the Royal Assent by Commission was a rarity, except during the crucial years 1642 and 1643, when King and Parliament were separated, and during the latter part of the reign of Queen Anne. It is not easy to see why the practice changed so suddenly about 1750; the most likely reason, to my mind, is

the very great number of bills, many of them private and unimportant, that were passing through Parliament during the second half of the eighteenth century. Be that as it may, it is certain that between 1770 and the accession of Queen Victoria, it gradually became the custom for the monarch to attend in person only the Prorogation of Parliament, and there to give his Assent to a few bills—normally the most important of the Session, and almost invariably including the Supply Bills. A few days before this, a Commission had been held, to polish off the vast numbers of other bills; and in the closing weeks of the Session there had usually been one or two prior Commissions. Thus:

Royal Assent by:

1774	31 March	King in person	39 Bills	
	5 May	Commission	41	"
	20 May	King in person	51	"
	2 June	Commission	23	"
	14 June	"	37	"
	22 June	King in person	10	" (3 Supply: Prorogation)
1775	3 March	King in person	10	"
	22 May	Commission	76	"
	26 May	King in person	19	" (3 Supply: Prorogation)
	22 Dec.	King in person	6	"
1776	25 March	Commission	50	"
	13 May	"	59	"
	21 May	Commission	35	"
	23 May	King in person	17	" (1 Supply: Prorogation)

From this table we can almost see the thing happening. The King in 1774 managed to give his Assent in person to batches of thirty-nine and fifty bills. Faced in the following year, however, with the prospect of ninety-five bills at the Prorogation, he struck; and who shall blame him? So seventy-six of the bills were dealt with at a Commission a few days before, and only nineteen reserved for the personal

Assent of the Monarch. From this time onwards, the King (whose mind was giving way) came less and less often to Parliament, until by 1800 it was almost an established custom that the Monarch came in person only at the beginning and end of the Session.

Even this could not be kept up. Queen Victoria, soon after her accession, began to miss Prorogations; and the last time she prorogued in person was in 1854, when, for the last time, the Royal Assent was given in person to divers Bills. It is probable that, had the Prince Consort's untimely death in 1861 not driven the Queen as far as possible out of public life for many years, she might occasionally have given her Assent in person to important Bills; but her absence for forty or fifty years was enough to establish a constitutional convention, and the practice of the personal Royal Assent may almost be said to have lapsed. Not quite: for in Canada, just before the war, the King is said to have given his Assent in person during his visit there; and the practice may yet be revived in this realm. But for the present, at any rate, the emergency procedure evolved by King Henry the Eighth to deal with a supremely embarrassing family difficulty has hardened into a regular part of the Constitution. How unexpectedly that Constitution grows, and what curious materials are built into its fabric!

THE KITCHEN AND REFRESHMENT ROOMS OF THE HOUSE OF COMMONS

by J. H. WILLCOX

(An Assistant Clerk in the House of Commons.)

THE provision of meals for Members of Parliament is looked on by the general public and even by Members themselves as a matter for jest. The popular Press seizes on any oddity of diet with as much eagerness as if it were a first-rate political crisis. Yet the feeding of Members is a serious business: if Members are not fed in the House they must go out to eat, and the business of Parliament suffers in consequence. Speaker Lenthall thus rebuked the House of Commons that cut off King Charles's head: "They were unworthy to sit in this great and wise assembly in a Parliament that would so run forth to their dinners."

The leisurely eighteenth century put up with these interruptions, and it was not until the Bellamy family (of Bellamy's pies) began their long reign as Commons Housekeepers that any service was established. John Bellamy, Housekeeper and Deputy to the Sergeant at Arms, described to a Select Committee in 1833 what had happened: "When my father came to the House, in the year 1773, he was requested by some of the Members to get some refreshments, which he, having only two rooms to do it in, was fearful could not be done. The subject was still pressed on him, and he contrived to meet it. The Members fixed their own prices on the things." The Bellamys, father and son, regarded this as a purely private arrangement, officially nothing to do with the House. It was certainly a very convenient private arrangement for them. They paid no rent. Their furniture, cooking apparatus, cleaning materials, coal, and candles were provided by the Office of Works. The whole of the staff were paid for out of public funds—they worked as cleaners for the House in the early morning, and as cooks, maids, waiters, etc., for Bellamy

in the evening. He paid for the china, glass, and plate only. Under these circumstances, it is not surprising to find that the best dinner, consisting of steaks, veal pie, mutton chops, tarts, salads, pickles, beer, toasted cheese, etc., "and that without regard to quantity", could be provided for 5s. 6d. Even so, the restaurant made no profit—Bellamy maintained that "nothing but a beefsteak or chop could be provided without serious loss to the person providing it." Asked why Alice's Coffee House (another "private arrangement") in Westminster Hall, which had none of the grants and subsidies enjoyed by Bellamy, remained prosperous, he answered that Alice's had "the advantage of the gowns and wigs of the lawyers, who paid a large subscription for the purpose" (the law courts sat in Westminster Hall in those days) "and was kept open the whole year, whereas the refreshment rooms of the House . . . are only open during its sitting." Bellamy did not go on providing meals for Members at considerable financial risk purely out of the kindness of his heart: he was a wine merchant as well as Housekeeper and, said he, "the great advantage of the kitchen to me is that it is an introduction to the sale of wine."

The burning of the old House in 1834, and a series of zealous reforming committees, brought this comfortable state of affairs to an end, just over 100 years ago. In 1848—curiously enough on the 1st April—a Committee was set up to inquire into the arrangements for dining in the new House. Six weeks later another Committee was appointed, to *control* the Kitchen and Refreshment rooms. That Committee, the instrument by which the House looks after its food, has been set up in each year of the last hundred. At first their activities appear to have been very slight. The old system whereby free fuel and furniture was provided by the Office of Works and a grant of £300 was paid for servant's wages, continued under the Committee's aegis. A series of ex-ducal butlers replaced the Bellamys, the "Housekeeper" became the "Keeper of the Refreshment Rooms", and Members continued to eat their meals in the cramped surroundings of Bellamy's kitchen.

The Committee were not entirely satisfied with their

labours, in spite of the momentous innovation in 1852 of "soup and fish into the bill of fare". But when in 1853 they offered the contract to "Messrs. Gunter's, Messrs. Staples of the Albion and other persons" these firms declined to take it. Similar offers have been made at various times since, but only once has an outside caterer accepted. The reasons are obvious. In the first place, contractors have always demanded complete control of the staff, which the House, unwilling to see its old servants of 30-40 years standing at the mercy of a new broom, has steadfastly refused. Moreover, commercial firms have not found the extreme uncertainty of the business attractive: each day's business, limited in any case to four-and-a-half days in the week, depends on the interest or dullness of the proceedings in the House; and all is confined to the duration of the Session (about 14 weeks in 1848, about 30 in 1948). It is these difficulties which make a grant almost always necessary. Incidentally, the amount of grant *per meal* rose from 1s. in the 1850's to 1s. 6d. in 1885, and that required in 1948 was equivalent to about 11d.

Contractor or no, the House has never very willingly granted financial assistance. When in 1863 the Committee asked for the £300 originally given to pay servants wages to be increased to £500, one Member protested indignantly: "Whatever Hon. Members had in that House, for that they ought to pay. If what was now proposed were done, it would be *the first step towards the payment of Members*. Let not the Chancellor of the Exchequer, then, be asked to contribute for such a purpose." Mr. Bass, on the other hand, maintained that "It would be a great convenience, and *a means of advancing business in the House*, if Hon. Members had an opportunity of dining in decency and comfort. There was no truth more commonly acknowledged." The money was granted and the Committee went on its leisurely mid-Victorian way. Several times they complained that the Dining Rooms "are badly ventilated, inconvenient and too small"; in another year they resolved "That the Clerk do write to Messrs. Green asking them to explain the fact that *a drunken man* came to remove and replace some of Messrs. Green's wine, and to desire Messrs.

Green to replace a rope and a pulley (the property of the House), stated to have been stolen by that man."

In spite of these vexations, the Committee could record in 1871 the high water mark of their complacency: they "observe with great satisfaction the manifest improvement in the accommodation of Members . . . and the satisfactory way in which the arrangements are carried out by Mr. Nicholes". Unhappily this mood of self-congratulation soon passed and after a series of disappointing years the Committee tried again to find a contractor. This time they succeeded, and Messrs. Gordon's of the City took over the catering. The experiment was not a success and the Committee reported in 1886 "That in view of the general dissatisfaction amongst Members at the present arrangements Your Committee have resolved to terminate the contract . . . the business will be carried on by the Kitchen Committee themselves, who have retained the services of a Manager." That is the system existing today.

This arrangement, though it has resulted in a much improved service to Members, has like its predecessors resulted in most years in either financial loss or a grant from public funds. Only two years after taking over, they had to ask for another £1,000 per year, which was only given after the Committee promised to present annual accounts to the House and to do their best to abolish tipping. The attempt to get rid of tipping was unsuccessful—rather, one gathers, because of the obstinate generosity of Members than the avarice of waiters.

Having triumphed over the Committee in the matter of the accounts, the House then, in 1896, turned its attention to the membership of the Committee. It is difficult to understand why Welsh and not Scottish Members should have been inspired with a determination to force their way into the Kitchen Committee. It is a strange form of nationalism: but no doubt the novel brilliance of Mr. Lloyd George, a new sun on the parliamentary horizon, encouraged these ambitious yearnings. However that may be, the Welsh got their way, and to this day there are two Welsh members on the Committee. It does not seem that Welsh rarebit appears more frequently (or Scotch Woodcock and Irish Stew less) as a result. It has,

however, meant that the Kitchen Committee, unlike other Committees, has not 15 but 17 members.

The Committee were next engaged in a long drawn out guerilla warfare with the Attorney-General and some Members of the House over the Licensing Acts. The Attorney of the time held that the Committee broke the law whenever they allowed a drink to be served in the unlicensed bars of the House, and advised them to bring in a bill to exempt them from the licensing laws. One of the Irish Members expressed the opposite point of view with some vigour: "This House, on a former occasion, took off the heads of a few kings . . . they did not look for law and order on those occasions; and in the case of supplying adequate refreshments we have sufficient warrant in our own necessities to dispense with the necessity for any special legislation." No policeman was willing to face the unknown terrors of Privilege by serving a summons on the Committee, and no decision was reached until 1934 when Sir Alan Herbert obtained a ruling that the courts of law could not interfere with the internal arrangements of the House.

While still under fire from the lawyers the Committee suffered at the hands of the suffragettes. A number of the latter got into the public gallery one afternoon in 1908 and, having chained themselves to the grille, could not be removed. Their loud cries drove the House to adjourn, and made the Speaker close the galleries for the rest of the Session. The resulting loss of custom cost the Committee a considerable amount of money, and they had to ask for a special grant.

Since the recent war the Committee have greatly increased the services available to Members; indeed, during the last hundred years the number of meals served has increased from about 50 a day to over 1,600 a day. They have also succeeded (and in this they must be almost unique) in abolishing tipping; the wages of the staff have been increased and regularized in compensation. And finally they have made themselves the leaders of fashion in the acquisition and serving of what might be called soft currency food. So far this forward policy has not made Members run forth to their dinners like their ancestors of three hundred years ago.

THE STRUGGLE FOR REPRESENTATIVE INSTITUTIONS IN GERMANY—II

by RICHARD K. ULLMANN, Ph.D. (Frankfurt)

GERMANY was not the only country of Western Europe where parliamentarianism was defeated in 1848. But it was the only one where defeat was consummated by subsequent events. Once again Prussia became the theatre, the protagonist being no longer a highly-strung, vacillating monarch but an ingenious statesman of rare will-power and craft—Bismarck.

William I, who succeeded to the Prussian throne after the mental breakdown of his brother, Frederick William IV, permitted the 1858 elections to be held without interference from the authorities—the first time such freedom had been allowed. In spite of the three-classes ballot, only 59 Conservatives were returned (as against 236 formerly) and 210 Liberals.

The preponderance of the Liberals proved a difficulty when William wished to reform the Army. The Chamber would agree to the reform only if the higher costs were balanced by a reduction of the training period from three to two years and if the popular territorials were preserved. The King considered this an interference with his prerogative as Supreme Commander.¹ The Liberals, who remembered well enough that in 1848 even progressive-minded soldiers had submissively obeyed reactionary absolutism, refused to grant the credits necessary for Army reform except on their own conditions. The King would neither yield nor rule unconstitutionally, and began considering abdication.

In this extremity, William's Minister of War, Roon, who

¹ When in 1871 Queen Victoria and the Duke of Connaught tried to establish a similar prerogative of the Crown over the Army, Gladstone, Prime Minister in a powerful Parliament, dispelled their claim without effort. In 1861, however, Prussia had no parliamentary tradition of long standing.

despised the "constitutional swindle" and the "cesspool of liberalism", advised the King to make Bismarck Prime Minister. William, easily won by Bismarck's clever diplomacy, accepted the latter's willingness to govern unconstitutionally, although he feared for himself the fate of Charles I. Bismarck, however, replied that he himself would not fear to suffer the fate of Lord Strafford. In the years between 1862 and 1866 comparisons between the "conflict" in Prussia and the various stages of the English Revolution became quite commonplace throughout Germany and Europe. But the outcome was very different.

Bismarck hated the "muddy wave of parliamentarianism". He subjected even his foreign policy to his distrust of countries with parliamentary government, especially Britain. His famous saying about "blood and iron" occurred in this characteristic context: "Not by majority decisions and resolutions will the great questions of our time be settled—this was the mistake of the men of 1848 and 1849—but by blood and iron!" He realized, however, that Parliament had come to stay. Since it could not be obliterated, he wished it to be truncated. In this respect Bismarck's outlook was in striking contrast to that of Cavour, otherwise the contemporary statesman most akin to him, who welcomed constitutional criticism of his government in spite of all the difficulties involved.

Bismarck had an entirely erroneous conception of the social movements of his day. This error produced some of his major blunders. Believing that only the newly rich industrial and intellectual middle classes opposed the Crown, he early toyed with the idea of "moving Acheron"; that is, of playing off the Socialist workers' movement against the *bourgeoisie* and, following the pattern of Napoleon III, of establishing a Caesarism based on universal suffrage perverted into plebiscites. On the assumption that industrial workers were at bottom as royalist in sympathy as the agricultural labourers on his own estate, he negotiated with the Socialist Ferdinand Lassalle, who supported Bismarck's idea that the masses could be led by demagoguery more easily than could the middle classes.

But Bismarck preferred to defeat the Liberals without

Socialist support, and succeeded. He levied taxes without money bills, bullied the Chamber, and dissolved it time and time again without obtaining a majority more favourable to him. He debased the Speaker's rights with quibbles (similar scenes were to occur again between von Papen as Chancellor and Göring as Speaker in 1932) and tried to argue that the King's Minister was not under the Speaker's discipline in the House. He based his attack against parliamentary rights on the so-called "lacuna theory", asserting that there was a hole in the Constitution. Government, which is the King's prerogative, must continue even while the three legislative institutions (King, House of Lords, House of Representatives) could not agree on legislation. Bismarck may even have believed that his interpretation was correct since temperamentally he was incapable of understanding the meaning of representative government—or government other than his own.

But unfortunately for the whole future development of Germany, Liberal resistance was weakened and eventually frustrated by two factors. Although the majority of the representatives were Liberal, the three-classes ballot favoured the plutocracy of the new industrial and commercial classes. Only a quarter of those belonging to the third class bothered to vote at all and in the industrial towns of the Ruhr barely one in ten. The first and second classes, who elected two-thirds of the "electors" (who in their turn chose the representatives) comprised only 280,000 voters all over Prussia, which then had a population of 18 millions. The well-to-do Liberal representatives feared that by too radical forms of opposition they might provoke violent revolt, which would favour not Liberalism, but Socialism—the "Acheron". They feared the red peril more than reactionary militarism, a situation to occur in a similar fashion in 1919.

The other factor weakening Liberal resistance was Bismarck's success in foreign policy, which fulfilled their most cherished national aspirations. The Liberals began, for the sake of Prussian self-aggrandizement, to forget the principles of the self-determination of nations in the case of Schleswig-Holstein, which wished to become neither Danish nor

Prussian but an independent German principality. They were eventually bribed into full support of Bismarck's policy by the victory over Austria in 1866 and the foundation of the North German Federation. The way in which Liberals adapted their views to the new situation and turned from fanatic adversaries of Bismarck into his unprincipled adulators, inaugurated the decay of intellectual integrity in Germany.

On 3rd July, 1866, the day of Sadowa, elections took place in which the number of Conservative representatives increased from 38 to 123, although the Liberals continued in a majority. But after the triumph of Bismarck's German policy, the Liberals were divided on the "Immunity Bill" by which, on 3rd September, 1866, the House approved *ex post*, by 230 votes to 75, the expenditures made by Bismarck illegally for Army reform during the four previous years. He did not even promise that in future he would keep to the letter and spirit of the Constitution. "The vote of September 3rd was as decisive a landmark in the history of Germany as was the Bill of Rights in the history of England or the Oath of the Tennis Court in the history of France. In each case the struggle between crown and parliament reached its term; but in Prussia it was the crown which won." (A. J. P. Taylor.)

In the 1860's, such a victory could not have the same meaning as in the seventeenth century. Unadulterated absolutism was a thing of the past, even in Prussia. Bismarck himself, the bully of the Prussian Diet, had to adopt one of the most progressive slogans of his day to achieve his aims in foreign policy and so silence the opposition at home. In April, 1866, he demanded, in the so-called "Confederate Diet" of Frankfurt, the convening of a German Parliament elected by universal vote.

This masterstroke of contradictory policies was intended to outbid Austria. But although Bismarck kept his word, after the war with Austria, and introduced universal, equal, direct manhood suffrage for the *Reichstag* (first of the North German Federation in 1867 and later for the Reich in 1871), he never thought that Parliament should wield much real power. He therefore devised a Constitution which the Prussian Crown

Prince, son-in-law of Queen Victoria, not inappropriately called "an artfully created chaos".

Under this Constitution, the major power of legislation rested not with the *Reichstag* but with the *Bundesrat* (Federal Council). The *Bundesrat* was not a House of States, as planned in 1848, or even a relatively weak second chamber like the *Reichsrat* of the Weimar Republic, but an assembly of envoys from the State governments, without any representative rights of their own. The Federal Council consulted and decided in secret, and had the exclusive right of moving bills and issuing decrees. Each delegate had a varying number of votes, according to the importance of his prince and State, Prussia holding 17 out of a total of 58. However, Prussia's small neighbours, encircled from all sides by Prussian territory, had no choice but to vote with her, so that she could easily command a majority. Moreover, Prussia possessed a veto in matters concerning the Army, Navy, customs and monopolies, and 14 votes were sufficient to prevent constitutional changes.

The Prussian Prime Minister, in the capacity of Foreign Minister, presided. Except for two brief periods the Prussian Prime Minister was also Chancellor of the *Reich*, just as the Prussian King was its Emperor. Bismarck increased further the power accumulated in his person by making the Chancellor the only responsible Minister of the *Reich*, all the other *Reich* Ministers being subordinated to him as mere Secretaries of State. As they did not form a Cabinet or College, a barren departmentalism was introduced, and this was to become one of the causes of Germany's defeat in 1918. When, in 1871, the South German States joined the Federation, the special wishes of Bavaria had to be met by the creation of a Foreign Affairs Committee of the Federal Council under her chairmanship. Prussia was not to sit on the committee. But Bismarck soon managed to foil its activities: in the years between 1871 and 1918 it met only four times. To forestall a drifting towards parliamentarianism, the Constitution also stipulated that no member of Government or Federal Council could at the same time be a member of the *Reichstag* or *vice versa*.

The North German *Reichstag* of 1867, elected by universal

vote, endeavoured from the first to introduce some progressive changes, but with limited success. It introduced the responsibility of the Chancellor without defining to whom he was responsible. In fact he remained dependent on the King of Prussia (who was President of the North German Federation and later German Emperor). The Liberals also tried to replace the Secretaries of State by responsible ministers. In 1869, Bismarck conceded a "moral" responsibility for the Secretary of Finance because he did not feel competent in this field. But in the 70's he continued to frustrate all further Liberal effort in this direction and only made the concession of allowing "deputies" when he was absent.

The *Reichstag* of 1867 made sure that Parliament would assemble regularly, that elections would be secret, and guaranteed freedom of speech in the House, of the Press, of teaching, research, religion and jurisdiction. After the experience of the Prussian "Conflict", the Liberals were not inclined to take risks. The *Reichstag* further managed to break Bismarck's intention of introducing an "iron" (perpetual) budget for the army. The Army budget comprised nine-tenths of all *Reich* expenditure, since besides the administration of customs and the consular and diplomatic services, the Army was the only Federal concern. Education, social welfare, law, etc., were largely left to the States. Thus the right of voting supply was the central prerogative left to the *Reichstag*. The Liberals demanded that each Parliament should have at least one chance of debating the Army expenditure and therefore wanted a triennial budget. But Bismarck ensured a septennial one, even when in 1888 the normal parliamentary period was increased from three to five years. On Bismarck's part this was merely a matter of prestige because, with the ever-growing rearmament, supplementary budgets had to be moved almost biennially. Only in 1893, after Bismarck's dismissal, was the *Reichstag* (to be made more compliant for a further increase of the budget) given the right of a quinquennial army budget. This meant that every *Reichstag* would vote supplies at least once during its life-time.

Between 1867 and 1870 the North German *Reichstag*

could, for the discussion of customs affairs, be enlarged into a "Customs Parliament". The South German States, not yet being members of the Federation, were still members of the Prussian-South German Customs Union, founded in 1834. This is an interesting example of a functional Parliament. It is also noteworthy that the members elected to this Customs Parliament in the South German States were in the main enemies of Prussian supremacy and the North German Federation. Smaller Germany, not Greater Prussia, was their ideal. But eventually they had to accept the *Reich* in the form contrived by Bismarck.

In December, 1870, Eduard von Simson headed the deputation of the North German *Reichstag* which, grudgingly admitted to the presence of William I, submitted a humble petition that the King would condescend to accept the new dignity offered by his peers under the pressure of events. By an historic irony it was the same von Simson who, as Speaker, had headed the 1849 delegation which offered the imperial crown to the King of Prussia on behalf of the Frankfurt Assembly—as a free act!

It is not surprising that a *Reichstag* of so little weight could not win much prestige, and it was soon nicknamed "*Quasselbude*"—which may be politely translated as "chatterbox". Government circles derided it at will. One ultra *junker* of the Prussian Diet remarked that a lieutenant and ten privates could disperse it easily. William II called its members "a bunch of fools" and boasted after twenty years' rule that he had never read the Constitution. He even issued an order to Bismarck and later to Bülow forbidding each of them to see members of Parliament in private.

This was the sort of stupidity of which Bismarck was never guilty. On the contrary, he used to invite those members friendly to his policy to his famous parliamentary beer parties. From the changing faces which appeared at these parties, augurs could predict changes of policy.

While a Parliament thus constituted could not attract men of talent—who preferred careers in the armed forces, the civil service or in commerce and industry—a sound parliamentary

tradition still survived in Bismarck's day. This derived from 1848 and from the years between 1862 and 1866. Some of the older members of Parliament deserve to be remembered for their personalities, oratory and activities. Virchow, Windhorst, Richter, Lasker, Bennigsen, Bamberger, Bebel and Liebknecht are not inferior to contemporary parliamentarians in other countries.

Bismarck did not rely on definite government majorities but chose his support according to his policy. For the first eight years after 1871 he found it most among the National Liberals, who once more betrayed one of their principles, that of freedom of conscience, when they backed his anti-Catholic legislation during the *Kulturkampf*. But they did not at first follow suit in his anti-Socialist drive and certainly would not have supported his switch from Free Trade to Protectionism which, apart from the more obvious social, economic and strategic considerations, was introduced also with a view to providing a higher income from customs duties, hoping thus to make the Government less dependent on *Reichstag* grants. As the National Liberals stuck to Free Trade, Bismarck reconciled the Catholics and recruited them for his campaign against the Socialists.

In spite of persecution and oppression, hardly modified by the influence of the moderate parties, in spite also of Bismarck's very progressive social legislation, the Socialists were not beaten but increased their numbers rapidly. Bismarck finally realized fully how mistaken he had been in assuming that the introduction of universal suffrage would bring support for royalism rather than for Socialism. He tried to get rid of the *Reichstag* which, however powerless, was still the platform of Socialist propaganda. His plan was to move anti-Socialist bills so stringent that every *Reichstag* would reject them, to dissolve it again and again over this issue; hoping thus to prove its uselessness, and finally to dissolve the *Reich* itself by decree of the Federal Council. This would have been quite unconstitutional and actually high treason against his own creation. He expected, however, that it would rouse the Socialists into rebellion, which he could then suppress by the Army. After-

wards he planned to found a new *Reich* without a Parliament but with some corporative representation or some sort of Estates.

This adventurous policy of a new "Conflict" was prevented by the young Emperor William II who presumed that he would succeed where the old Chancellor had failed, namely, in winning the workers back from Socialism. Bismarck was dismissed. It is of symbolical significance that five years later, the *Reichstag* refused to congratulate him on his eightieth birthday.

Under the mediocre Chancellors who followed Bismarck, the *Reichstag* seemed to share the decline of German statecraft—instead of taking advantage of the mediocrity of the Chancellor to improve its own powers and prestige. In a number of imbroglios of minor interest the parties and their leaders became more and more narrow-minded in the pursuit of wider parliamentary privileges.

Only thrice did the *Reichstag* live up to its moral responsibilities. In 1906, during the inhuman war of annihilation against the West African tribe of the Hereros, it refused the grant of further credits with an almost Gladstonian righteousness. But after it was dissolved, a new *Reichstag*, backed by the majority of the German people, complied with the Government's demands. The second instance occurred in 1908 when a storm broke over the Emperor's foolish interview given to the London *Daily Telegraph*, and both Parliament and public opinion rose against his irresponsible amateurishness. The third incident came in 1913 when the *Reichstag* defeated (by 254 to 53 votes) the Government's attempt to cover and even to defend the presumption of some Army officers who had usurped the powers of the civilian authority in the small town of Zabern in Alsace.

On the whole, the Government relied on the Conservatives who—in contrast to their English opposite numbers—attended Parliament as declared enemies of parliamentarianism. Their presence delayed the most necessary political, social and financial reforms and thus inevitably strengthened the Social Democrats, who became the strongest party some time before the first world war.

The parliamentary situation was aggravated by the fact that the member States of the *Reich* had achieved very different stages of representative government and undertook reform at very different speeds. Baden and Bavaria introduced the direct vote in 1905 and thus opened the way for the Socialists to change from disruptive opposition to constructive co-operation. Even so, it took another eleven years before the universal and secret ballot was adopted in these two States. In striking contrast to their progressiveness Mecklenburg retained its "Constitution" of 1755 which preserved antiquated estates. Oldenbourg, Hesse and Saxony stuck to pluralism, and above all Prussia held fast to its three-classes ballot. While in 1913 the Socialists occupied 110 seats of 397 in the *Reichstag*, they obtained only 10 of 450 in the Prussian Diet, which represented two-thirds of the entire German population and at that the main centres of industry. It is not surprising that the abolition of the reactionary suffrage of Prussia became the major demand of the progressive forces all over Germany. In 1916, the Prussian King, William II, publicly—although against his inclination—promised reform. But the *junkers*, who controlled the *Diet* with ease, did not respect their King's promise and prevented any change until the so-called Revolution of 1918.

When the war broke out in 1914, the *Reichstag* parties agreed with the Government on a political truce which lasted until December, 1915, when twenty members refused the granting of further war credits. This opposition became the Independent Socialist Party in 1917. In the same year the majority parties tried to replace the Chancellor, Bethmann-Hollweg, by one of their own choice, selecting, strangely enough, Bethmann's predecessor, Bülow, who had fallen foul of William II. Had they succeeded, they might have opened the way for wider parliamentary control. But General Ludendorff, of the Supreme Army Command, proved stronger, and his nominee, Michaelis, was appointed.

The same majority parties showed, under the leadership of Stresemann and Erzberger, a deplorable lack of consistency. In July, 1917, they accepted a "Peace Resolution" demanding

international understanding without conquest by either side. But they forgot all their good intentions when the Russians sued for peace after the Revolution of 1917 and so gave Germany the chance of imposing exorbitant treaties on Russia and Roumania. Thus even in the eleventh hour the *Reichstag* overlooked the community of interest between parliamentarianism and international justice and became the willing torchbearer of autocracy—whose victories abroad had never failed to lead to oppression at home.

When in the late summer of 1918 German resistance weakened in the West and Germany's allies in South-eastern Europe asked for peace, the all-powerful dictator Ludendorff broke down and ordered the introduction of parliamentary democracy in the *Reich* and Prussia. The new Chancellor, Prince Max von Baden, initiated the necessary reforms, mainly the Parliamentary Act of 28th October, 1918. Six days later, the sailors' mutiny broke out in Kiel, the beginning of the so-called Revolution.

This succession of events shows that once again constitutional development was in the first place not achieved by the people conquering their rulers, as had been the case in Britain, France and U.S.A. It was the gift of rulers forced to grant it by defeat through foreign armies. Hence democratic government is associated in the minds of the majority of the German people not with a glorious revolution against tyranny from within, but with inglorious defeat and coercion from without. It is most unfortunate for the future of German parliamentarianism that the same thing should have happened again in 1945.

It is true that the Revolution of 9th November inaugurated a system of Workers' and Soldiers' Councils after the Russian pattern. But six weeks later a Congress of council delegates in Berlin decided in favour of a National Assembly elected in a democratic manner. Radical elements tried to prevent this drift into *bourgeois* parliamentarianism by violence. But they were defeated by reactionary troops which the Social Democrat rulers—rather than forming a militia of their own moderate workmen—called to help. In this way, while defeating the dictatorship of the proletariat from the Left, the Social

Democrats saved their deadly enemy on the Right, militarism, in its very hour of weakness. In Bavaria, the statesmanship of Kurt Eisner proved that democratic parliamentarianism and workers' councils could co-operate constructively. But his assassination was followed by a period of "red terror", which was suppressed by a wave of "white terror" before parliamentary democracy began its precarious existence.

As a result of all these cross-currents, the newly founded democratic republic had to reckon with dissatisfied forces from both Right and Left, and these made use, for their anti-parliamentary ends, of a system which they despised and hoped to wreck in their own good time. The National Assembly which created this system had been elected by universal, direct, secret suffrage of all men and women over twenty and was based on proportional representation. It was convened at Weimar, a city chosen for its humanist tradition as opposed to the militarist tradition of Potsdam. Actually it was much more the atmosphere of the Frankfurt Assembly of 1848 which was revived in matters like the national colours and the anthem, though not very many features of the Frankfurt Constitution passed into the one accepted in Weimar on 11th August, 1919. The new Constitution was proudly called the most liberal and egalitarian of all Constitutions, a claim which was so true that paradoxically it was proved by its failure.

There were two chambers, the *Reichstag* and the *Reichsrat*. The *Reichsrat*, representing the States, was endowed with a suspensive veto which could be overruled by a two-thirds majority of the *Reichstag*. Otherwise, the *Reichsrat*, deprived of all the rights of its predecessor, Bismarck's Federal Council, and having neither the weight and tradition of the British House of Lords nor the powers of the American Senate, found little response with the German people as a merely mechanical part of the legislature. It certainly did not fulfil a federal function in smoothing out frictions between the States (*länder*) or between the *Reich* and the States. A third chamber, planned as a deliberative Economic Council, never grew to full constitutional status.

Thus the *Reichstag*, normally elected for four years, was the main constitutional body. It was to represent the sovereign will of the people from which all political authority was derived. Though the *Reich* President could dissolve it (only once on the same issue), its successor was to be elected within 60 days and assembled within another 30. Ministers appointed by the President were dependent on its vote of confidence.

Why did this system of apparently full-grown parliamentarianism work so badly that ten or eleven years later the *Reichstag* had lost all influence and was made the stepping stone for dictatorship? In my opinion, there were three major reasons.

The first was the peculiar form of proportional representation which put mathematical justice higher than political commonsense. The *Reich* was divided into 35 large constituencies where not candidates but parties fought one another, and the elector chose, not a person, but a list of persons (almost a serial number). When a member died or retired, there was no by-election, but the next number on his party's list replaced him. Every party obtained one mandate for every 60,000 votes. Odd surplus votes were carried forward to the *Reich* list of the same party. This system took account even of very small minorities. It represented—too faithfully—the political vagaries of a drifting electorate. It encouraged the formation of more and more splinter groups, until they counted well over 30 and atomized the moderate centre, while promoting radicalism among the frustrated masses.

Clearly with this system no party could ever achieve a majority in the House and form a Cabinet without entering into a coalition. Hence the main business of parties and Ministers consisted not in government, but in bargaining and manoeuvring for position. But since it is for the purpose of government that politicians, parties, Parliaments and Ministers are elected, the vacuum of real authority at the top was filled automatically, first by civil servants and "unpolitical", "expert" Ministers, later by anti-parliamentary forces, which had carelessly been introduced into the Weimar Constitution.

With this we turn to the second major reason for the failure

of the Weimar Constitution. Its authors had an exaggerated conception of "government *by* the people", a conception which frowns at too much representation through Parliament and parties and tries to bring in the people themselves through plebiscitarian forms which, except in small communities like the Swiss Cantons, favour Caesarism rather than democracy. This tendency found expression in two ways: first in the election of the *Reich* President directly by the people and second in the direct popular initiative and the referendum. These two devices never worked in Weimar Germany. But the President, entirely independent of Parliament, could fill the vacuum at the top, in spite of all constitutional precautions. He was the Supreme Commander of the Republican army, which since the day when it had rescued the Social Democrats from Bolshevism, had remained the refuge of reactionary militarism. Through outward compliance with the Republic it maintained a considerable independence from public supervision. This is clearly seen from the fact that, in spite of innumerable changes of policies, Cabinets and Parliaments, Army Command succeeded in keeping the same man, Mr. Gessler, in the position of Army Minister without interruption from 1920 to 1928. When too much had transpired about secret funds of which neither the *Reichstag* nor its competent committees had ever heard, he was replaced by an even more "reliable" man.

The special danger for parliamentarianism was embodied in Article 48 of the Constitution according to which the President could use the Army for the restoration of law and order. In cases of emergency he could also suspend most of the constitutional liberties and govern by decree. The decrees, of course, had to be countersigned by the Chancellor or the responsible Minister, and the *Reichstag* had to be informed; the *Reichstag* also had the power to rescind the decrees. Such a situation arose in 1923 when, at the height of inflation and after the breakdown of passive resistance in the Ruhr, a Right-wing Bavarian government not only made moves toward more independence from Berlin but also seemed to be planning aggression against Saxony which was governed—quite con-

stitutionally—by a radical Left-wing government. In the “State of Emergency” proclaimed by the President and the Chancellor, the Army did restore order—with great willingness in Saxony against the Left, with hardly any interference in Right-wing Bavaria.

The crisis of 1923 illustrates not only the second but also the third major reason for the failure of parliamentarianism in the Weimar republic: the competition between *länder* and *Reich*. The Constitution stipulated that the *länder* should have liberal democratic constitutions and that, in case of doubt, *Reich* law should overrule State law. The details of constitution-making were left to the *länder* themselves. With their diverse political and social backgrounds, their Diets and Ministries varied a great deal and were frequently abused for ends which lay outside their boundaries. In January, 1933, elections took place for the Diet of the petty State Lippe. Hitler himself carried the campaign to every little village and increased the poll of his party from 40 to 45 per cent. Thus Lippe became the key which opened the doors of the *Reich* Chancellery for him.

In spite of the weakness inherent in the Weimar Constitution, Germany might have developed a genuine democratic tradition if the comparative normality of the years 1926 to 1929 had continued. But the world economic crisis of 1929 worked havoc in the precariously balanced German situation. In this new emergency all the elements weakening the *Reichstag* worked together in favour of the plebiscitarian Caesarism of the President.

Though Article 48 was intended to counter armed revolt, it was used by Chancellor Brüning, supported by President Hindenburg, to issue emergency decrees in the field of economy, finance and the social services. When the *Reichstag* demanded the withdrawal of the decrees, Brüning dissolved it. But the composition of the new *Reichstag* confronted the Social Democrats with the awkward choice of playing into the hands of the National Socialists or of tolerating Brüning with his unconstitutional emergency decrees. On 18th October, 1930, while avoiding the discussion of a vote of no confidence

for Brüning, it was agreed to refer the problem of emergency decrees to a committee, from which it never emerged. This was the abdication of the *Reichstag* and consequently of parliamentarianism. Henceforward Brüning, tolerated but not supported by Parliament, had to rely on Hindenburg's readiness to sign his decrees. This became most evident in 1932 when Brüning was dismissed in a manner not very different from the way Bismarck had been dismissed by the Emperor.

The *Reichstag* continued to play an important, though passive, part in the events leading to the replacement of the presidential dictatorship by that of the National Socialist *Führer*. Von Papen, who had much less support in the *Reichstag* than his predecessor, Brüning, increased the speed of dissolutions and new elections. This procedure lowered the prestige of the overworked democratic machinery to zero, and helped to increase rapidly the numbers of the mutually hostile radical parties, the Nazis and the Communists.

Von Papen also struck the most decisive blow against the dying parliamentarianism of Germany by the removal, with the aid of "a lieutenant and ten privates", of the constitutional Left-wing government of Prussia. A few months later Bavaria, whose constitutional Prime Minister had boasted that he would not suffer the fate of his Prussian colleague and would arrest a *Reich* Commissioner at the Bavarian "frontier", fell a victim to the onslaught of National Socialism like the rest.

On 30th January, 1933, Hitler, leader of the strongest party (which at that time received 35 per cent. of the votes) was made Chancellor by President Hindenburg. The *Reichstag* was dissolved once more. Before the new elections took place, the *Reichstag* building went up in flames, a crime of symbolical portent. It was made the pretext for outlawing the Communists and holding the elections under a wave of terror. Nevertheless even in the new *Reichstag* the Nazis held only 41 per cent. of the seats, and barely over 50 per cent. in coalition with the Nationalists. The other parties were bullied and terrorized until the *Reichstag* accepted (with the two-thirds majority required for constitutional changes, but against the valiant opposition of the Social Democrats) a far-reaching

Enabling Act, which used the letter of "the most liberal of all constitutions" to kill its spirit.

Although eventually all parties except the Nazis were outlawed one after the other, the framework of the Weimar Constitution was never completely abolished. A *Reichstag* of yes-men took pleasure in rubber-stamping Hitler's so-called laws. A gibe called it the most highly paid choral society in Germany: its members received their salaries for singing the first stanzas of the National and the Nazi anthems once or twice a year when they met for a one-day session to applaud a pronouncement of the *Führer*. When the second world war began, the "choral society" fell into oblivion. So did the annual Party Rallies of Nuremberg, which had as good a claim to be regarded as a form of popular representation as the degraded *Reichstag*.

Hitler and his system have gone. Once again the time seems to have come for the German people to take government into their own hands. The victors of 1919 had left this task more or less to the Germans themselves, though they exerted some pressure against Bolshevist tendencies. The victors of 1945 are taking a much more active interest in Germany's way of life, but unfortunately they stand for two mutually exclusive and hostile systems. Hence two Germanys have come into existence, each of which is claiming to be the nucleus of the united Germany of the future.

The German Democratic Republic of the East follows the pattern of the "People's Democracies". Its representative institutions cover scantily a totalitarian one-party dictatorship which has been imposed from outside and is being sustained by military and police pressure.

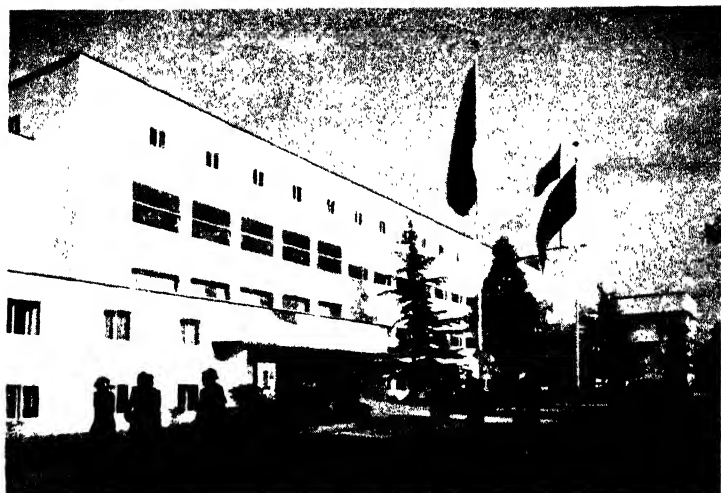
On the other side, the Basic Law of the West German Federation exposes, by the very fact that it is temporary, the impact of the division of Germany, even more so than did Bismarck's North German Constitution of 1867. Though formally agreed upon after more or less free deliberations of the German political parties, it cannot hide the marks of the economic and political pressure used by the Western Powers, who—regrettably enough—do not see eye to eye in their

policies for Germany. Thus the Bonn Constitution is a compromise between Allied contradictory anxieties on the one hand and a strange mixture of German memories, fears and aspirations on the other.

Certainly the partition of Prussia and the agglomeration of new *länder* is in many ways an advance, though some of the new creations such as Schlesvig-Holstein and South Wurttemberg-Baden are no more capable of statehood than some of the ancient petty States. Above all, the insistence of France and the United States on a federal structure has enhanced the feeling of many Germans that parliamentary democracy is equivalent to disunity and weakness. The popular reaction against outside pressure, against parties, diets and Constitutional wrangles, shows once again the increasing estrangement of Germans—especially of the younger generation—from Western political thought, however strongly they may, at the same time, oppose the Eastern system.

It would be quite possible to keep Germany divided if there were in existence, here and now, an integrated European Federation in which each German *land* could attain direct membership. But as we have still a long way to go, it is essential to reckon not so much with German membership of United Europe in a distant future, as with her function in, and her reaction to, the present European situation. Recent constitutional experiments are likely to endanger German democracy from within and thereby the success of the eventual democratic unification of a wider Europe. This unification will depend on the ability of the powers to make possible the *voluntary* and *lasting* acceptance by the bewildered and somewhat ill-balanced German people of parliamentary and representative forms of government which, until to-day, have never been given a fair chance of building an indigenous German democratic tradition.

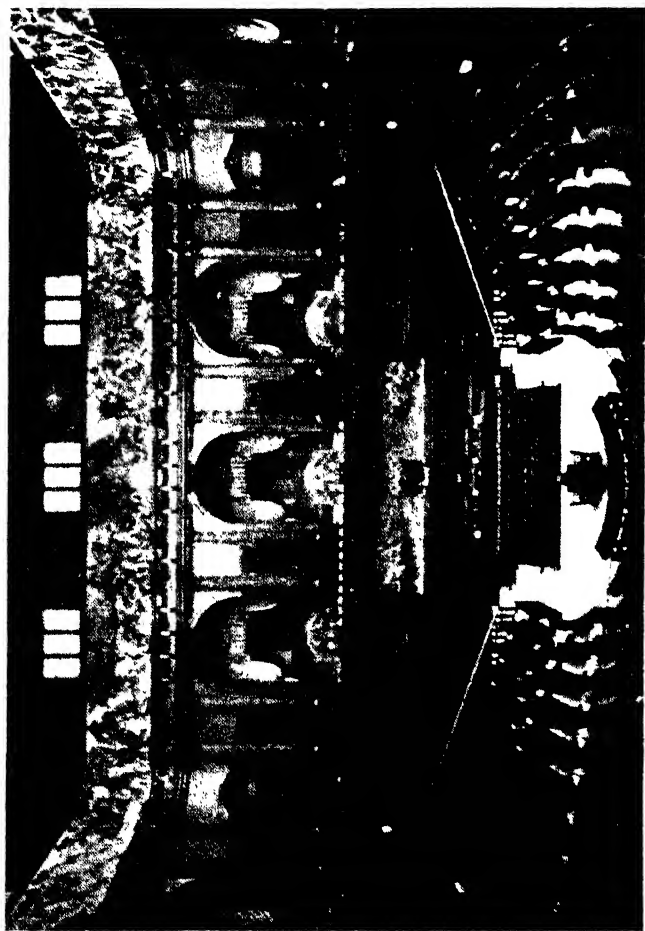
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The Building in Bonn in which the West
German Federal Parliament meets.



The large chamber in the Parliament Building at Bonn.



The Chamber of the Palace of Montecitorio, Rome.

LEGISLATIVE BUILDINGS OF THE WORLD—V

THE PALACE OF MONTECITORIO, ROME¹

THE district in which the Palace of Montecitorio, the home of the Italian Chamber of Deputies, now stands is rich in historical and archaeological memories. Until the fifth century of the Christian era Rome had preserved its ancient buildings almost intact, but with the spread of Christianity and the invasion of the barbarians the Eternal City began to change. The severe decrees of Theodosius prevented damage to ancient monuments, and these were consequently adapted to Christian purposes and became chapels or oratories. In the second half of the first millennium there arose in the neighbourhood of Montecitorio many religious buildings adapted to the old monuments or superimposed on them. Thus Rome, by the beginning of the tenth century, was even externally Christianized.

At this time the monuments underwent another change. The Roman barons, at the height of their power, established themselves in these old buildings which, because of their thick walls and solid construction, could easily be made to serve as fortresses and castles. Around them were built mean houses for artisans. Rome then assumed the sombre and melancholy character which lasted until the Renaissance.

This Rome of fortresses, factious and turbulent, this baronial Rome, bloodstained by revenge and reddened by recurring fire, awoke to new life when in 1377 Pope Gregory XI decided to transfer the papal seat from the banks of the Rhone to those of the Tiber. Under a succession of humane Popes there began a cleansing of government and society. Decaying buildings were restored, new ones erected, and the city took on a more pleasing aspect. In the place of narrow

¹ Based on a translation by J. D. Lambert, B.A., B.Litt. of an article by Signor Giovanni Bach.

streets and sombre fortresses there arose magnificent villas and palaces whose architecture was inspired by the classical tradition. In various parts of the city there began the feverish search for antiques which would revive the memories of a glorious past. On the hills and deserted fields of the suburbs, prelates and nobles built magnificent villas where scholars and men of letters who shared the passion for Imperial Rome could meet. The neighbourhood of Montecitorio, however, remained virtually deserted, only an occasional oratory or ruin recalling the time when the area was populated.

Although the sack of Rome in 1527 threw the city back into a state of temporary desolation and ruin, a new city arose phoenix-like from the ashes. This was due in great part to Pope Sixtus V who gave the city its modern aspect, monumental and imposing, and to the genius of Michelangelo.

In the seventeenth century the Montecitorio district, though near the centre of the city, was still covered with vineyards and uncultivated fields and remained one of the most secluded and quiet parts of Rome. It was here that Pope Innocent X wished to build a sumptuous palace for his sister-in-law, Donna Olimpia, and her niece Rossana. The foundations were laid in 1650. The plan envisaged a three-storied palace with five façades and a monumental entrance over which there was to be a balustrated balcony supported by two caryatids. Because of the Pope's death in 1655 and a shortage of money, work on the building was suspended. In 1694 work was resumed by Pope Innocent XII who wished to turn the building into an institution for the destitute, but under the influence of the architect to whom the work had been entrusted the Pope agreed that it should be made into offices for the use of the Papal Courts.

The work was attended by many difficulties. Individuals and institutions hostile to the architect or with interests in the district which they feared would be adversely affected by the proposed building tried to hinder the work. The owners demanded a high price for the building. Although the proposal of the architect prevailed, the Pope imposed a special tax on legal deeds and the Court's judgments in order

to recompense the Apostolic House of the Sick Poor who had expected to manage the home for destitutes. One of the medallions on the main entrance has a representation of *Charity* in memory of the original purpose of the palace, and another portrays *Justice* as a symbol of its actual use.

The original plan of the architect envisaged a large square with arcades opposite the building, but this would have necessitated important and expensive expropriations. The Pope, who had been struggling to restore the public treasury which had been squandered by his predecessors, would not agree to this extravagance. As a result the plan for the square was reduced to the modest proportions which have survived to our own day.

And so gradually, where there had been uneven land and scattered vineyards, rose the Palace of Montecitorio. In 1695 the tower was ready and the great bell pealed for the first time. In 1696, in the presence of the Pope, the fountain in the adjoining courtyard was dedicated.

In 1733 Pope Clement XII began the work of clearing away the ugly hovels and alleys surrounding the Palace. The Palace of Montecitorio was further improved while Pius XI occupied the papal throne. During the Napoleonic period the square by the Palace became a centre of great activity. A sort of open-air Stock Exchange was established, and a cafe was opened. Inside the Palace the judicial work continued until, on 20th September, 1870, the Palace of Montecitorio was occupied by a detachment of guards who had been entrusted with the task of controlling the strategic points of the city which had been conquered in the name of a United Italy.

One of the first tasks after the occupation of Rome was the search for a building in which Parliament could meet. On the suggestion of the President of the Chamber of Deputies, the Palace of Montecitorio was selected for the use of the Deputies, and work began on the preparation of a suitable chamber. On 1st November, 1871, a parliamentary commission, led by the President of the Chamber of Deputies, officially took possession of the new seat of Parliament. The

ceremony was indeed impressive. The sky, which had been overcast for several days, was clear and in the evening Venus, the star of Italy, shone with unwonted splendour. The crowd was so large as to cause scenes of panic.

At the first meeting of the Deputies it was obvious that the Chamber was unfitted for its new purpose. Because of the sombre light, the Pompeian red colour, and the severe architecture it was compared to a funeral crypt: because of its narrowness the newspapers hostile to the Government called it the *gabbione* (the great cage). Moreover, as it had no heating and was still unfinished, the cold air came in through the doors so that the President published the following order, which was approved unanimously: "The Deputies have permission to wear hats, overcoats or furs: they are also allowed a woollen scarf round the neck. . . ."

The following year the Chamber was redecorated in a light grey shade. It had been intended that the Chamber should be used as a temporary expedient while new accommodation was being prepared, but, in spite of the many drawbacks, the Chamber remained in use for many years. In 1876 Francesco Crispi, the new President of the Chamber, proposed the construction of a magnificent group of three buildings on the site where the Bank of Italy was later erected, but the enormous expense led to the abandonment of the project. Crispi spoke harshly of the members of the Budget Commission who had rejected his proposal. "Small men, incapable of feeling or understanding the great things which should be achieved in the name of Italy."

In 1898 the debating Chamber seemed almost on the point of collapse. Three different Commissions examined the Chamber, and the last declared that it was no longer capable of fulfilling its function. Quickly it was demolished, even before a new building could be constructed, and the deputies had to meet in an inadequate room on the first floor. A Parliamentary Commission presided over by Ferdinando Martini, the author, was appointed to organize a competition for designs for a new Chamber. Special attention was to be given to heating, lighting and ventilation, and it was decreed

that "the drains were to be completely cleaned and rebuilt in accordance with hygienic principles and the best systems".

There were many competitors, but the plan came to grief because of the jealousies and violent disputes in the press. It was not until 1902 that Ernesto Basile, a Sicilian architect, was entrusted with the task of preparing plans for a new palace. Even so, bureaucratic difficulties prevented a start being made until 1908.

It took nineteen years to build the new palace. It was provided with a wealth of marble, worthy of the secular tradition of Roman architecture. The last narrow alleys of the papal period disappeared and the old courtyard was rebuilt. The new debating Chamber was semi-circular in shape, having a diameter of about 115 feet and a depth of about eighty feet. The total area was about 8,400 square feet, nearly three times as great as that of the House of Commons Chamber at Westminster.

Just as there was much criticism of Barry's design for the Palace of Westminster which was built after the fire of 1834, so there were many who found fault with Basile's work. He was accused of having joined a modern palace to one which was essentially of the baroque style of the seventeenth century. It was said, moreover, that the architectural themes were more suited to a sumptuous patrician villa or a theatre than to a legislative building. Finally he was criticized for using ornamental bricks at the bases of the façade on the grounds that this spoilt the monumental appearance of the building and made it look like a factory. But there were many who defended the architect's work.

The solemn inauguration ceremony took place on 20th November, 1918. Those who spoke on that occasion were Giuseppe Marcora, President of the Chamber, and Vittorio Emanuele Orlando, President of the Council. After the second world war the Hall of the Chamber of Deputies was used by the Italian National Council. The Constituent Assembly began its work in the palace on 22nd June, 1946, since when it has been in constant use, first for the Constituent Assembly and later for the Chamber of Deputies.

PARLIAMENTARY CONTROL OF THE
PUBLIC ACCOUNTS—Iby BASIL CHUBB¹*(Lecturer in Political Science, Trinity College, University of Dublin.)*

TO view the House of Commons only as “the grand forum of debate”, or as a legislative production line, is to miss important aspects of its work. The examination of the public accounts is a case in point. Vital though it is if government is to be really responsible, the floor of the House is no place to perform this task. Other procedures and techniques are necessary and exist. Since they work well and do not take up the time of the House, we hear little about them, the less so since the job is to many, in Gladstone’s words, “work of a dry and repulsive kind”.² It is intended to describe in two articles, the system, machinery and techniques by which the vast public accounts are examined and reviewed for Parliament and the nation.

From medieval times Parliament insisted, with varying success, on the principle that kings and governments must account for the funds granted to them. It is customary to point to this insistence with pride, yet such admiration of the principle has tended to obscure the more important facts that the practice of accounting and control was, at first, negligible and, at best, inefficient, fragmentary and spasmodic until the nineteenth century. It was not until the decade 1857-67 that a complete system and adequate machinery were evolved. This system and machinery have lasted, with no major alteration, until the present, though the day to day techniques of audit

¹ Acknowledgement: I wish to thank the Comptroller and Auditor General, Sir Frank Tribe, K.C.B., K.B.E., for his willingness to answer many questions of fact.

I alone am responsible for the inferences drawn and the opinions expressed.

² H.C. Debates, 18.4.1861, Col. 774.

and examination have been necessarily modified to meet changed conditions.

The system then evolved was the result of much thought and many piecemeal reforms in the first half of the nineteenth century. The observations and experiences of fifty years and more were summarized, in 1857, by the Select Committee on Public Monies,¹ which reached four conclusions. They were, first, that to control spending effectively, it was not sufficient for the House merely to appropriate funds (i.e., to allocate funds to specific purposes) and to control their issue through the Exchequer; second, that departments ought to present regular and detailed records of the final application of funds (i.e., Appropriation Accounts) so that the House might see if money was spent as ordered; third, that if such accounts were to be useful as a means of control, they must be examined efficiently, and this meant, in practice, examination on behalf of the House by an expert auditor, who must be its servant; finally, that, thus supplied with information sifted and made intelligible by an expert servant, a select committee, not the whole House, could then, and only then, exercise an effective scrutiny and check of the accounts. Such a committee would complete what Gladstone called the "circle of control", and was indeed necessary to it. Money may be carefully appropriated and legally issued and the administration's accounts may be audited by an authority set up by the House of Commons, but unless the House is prepared to take notice of the results of such audit these checks lose their sanction and are in danger of becoming meaningless forms.

The new system, based on these conclusions, was the work of Gladstone and his able Treasury chiefs between the years 1859 and 1866. In 1861, the Select Committee of Public Accounts was appointed for the first time and, in the next year, its permanence was assured by a Standing Order of the House, No. 73 (now No. 90). In 1866, the Exchequer and Audit Departments Act, the basis of the present day accounting and audit system, provided for full Appropriation Accounts to be prepared under Treasury direction by all departments and to

¹ Its third report is of most interest. H.C. 279 (1857, Sess. II).

be presented to the House. It also created the post of Comptroller and Auditor General, made him an officer independent of the executive, and gave him statutory duties and powers to audit and examine the accounts for the House of Commons and to report thereon. Thus provided, the Accounts Committee could carry out the direction of the Standing Order to examine the accounts.

It is, therefore, the work primarily of one officer of the House and a Select Committee of the House which has to be examined here. Each depends upon the other. The final examination by a committee of the House is the sanction on which the Comptroller and Auditor General's authority depends and outside his statutory duties he tends, as a servant of the House, to be guided by its committee. Equally, the work of the Accounts Committee is unintelligible unless the complicated process which precedes their examination is understood. It alone makes a reality of what would otherwise be a farcical impossibility. The Committee's work depends, in effect, entirely upon the audit and examination carried out by the Comptroller and Auditor General and his Exchequer and Audit Department. Its primary source of information, the public accounts, have been thoroughly examined and sifted before the few points which rate attention are put before the Committee in simple and intelligible fashion by the Comptroller and Auditor General. The key position in the system which is occupied by this officer and his department, therefore, warrants some attention.

The Comptroller and Auditor General, the "acting hand"¹, the "guide, philosopher and friend"² of the Accounts Committee, is appointed by Letters Patent on the Prime Minister's nomination. His full title is "Comptroller General of the Receipt and Issue of His Majesty's Exchequer and Auditor General of Public Accounts". In his capacity as Comptroller he authorizes all issues from the Exchequer on the demand of

¹ Mr. T. Gibson Bowles to the Select Committee on National Expenditure. H.C. 387 (1902), Evidence, Q. 1017.

² The Rt. Hon Osbert Peake to the Select Committee on Procedure. H.C. 189-1 (1945/46), Evidence, Q. 3927.

the Treasury and after he has satisfied himself that Parliament has given authority for them. His duties in this respect are of little interest here.

His status and position are unique in many respects. He is an officer of Parliament, his salary is charged, like those of the judges, to the Consolidated Fund, and he is removable only on an address to the Crown by both Houses. Since, however, it is the House of Commons which is the governing authority in financial matters, he considers himself primarily responsible to that House and to be its servant.

He has, so far, always been a senior civil servant and has normally had experience of government financial procedure. Many Treasury officers have held this post, though the present holder, Sir Frank Tribe, was formerly Secretary of the Ministry of Food. But although he was a civil servant and works with the Civil Service, yet he is not one of them. His constitutional status and duties isolate him and he is, in the words of Sir Frank Tribe himself, "very much a lone wolf".¹ Unlike any civil servant, he has no ministerial chief. He has statutory duties and large discretionary powers and, while his job is to aid the House, the responsibility for his actions is his alone.

Also, although he conducts an audit of the nation's accounts and controls a staff of auditors, he is not himself by profession an auditor. He is an administrative civil servant. His position is thus somewhat analogous to that of the amateur head of a department of professionals, which is a feature of British administration. Yet, he is not entirely amateur. He brings with him the training and knowledge of a senior civil servant, the views of the departments, and a self-imposed duty to watch the trends of parliamentary opinion.

The Comptroller and Auditor General heads the Exchequer and Audit Department, whose headquarters are in Audit House on the Victoria Embankment. The department is surprisingly small, consisting of some 380 auditors of one rank or another. The great majority of them are housed and work in the accounts branches of the departments whose accounts they audit. Local audits at depots and outstations

¹ In conversation with the writer.

are made as and when necessary, and, in addition, there are sections based in Egypt and New York.

Unlike their chief, the auditors are ordinary civil servants who are trained in this special work. They all enter the Service in the normal fashion in the executive class at eighteen and are trained internally and "on the job" for three years, which period corresponds to Articles. They are considered to be as highly trained as professional accountants, though specially trained to conduct an audit which has no parallel elsewhere.

The duties of the Comptroller and Auditor General are laid on him by statute and by the Treasury and he has, besides, wide discretionary powers which he exercises with the knowledge, consent and encouragement of the Accounts Committee.

First and primarily, he examines the accounts to satisfy himself that parliamentary grants have been applied to the purposes for which they were intended and in the amounts intended, that they have been spent according to law, Treasury regulations and past Accounts Committee recommendations, and that adequate rules to govern expenditure procedures are made and enforced by the departments. Second, he has developed extra-statutory or discretionary duties to report waste and inefficiency and he has been consistently encouraged to do so by Accounts Committees, which have welcomed the opportunity to extend their own functions. But such a check is by no means complete and, though its high value is not denied, it is a secondary duty. Waste and inefficiency often do not appear on the face of the accounts. It is true that they may be and are found by an experienced auditor, but the techniques used are not designed specifically to reveal all that one would demand from a proper "efficiency audit". Successive Auditors General have carefully stressed this point and have made it clear that, despite their undoubted success in revealing waste and inefficiency, they exist primarily to conduct an audit and not to investigate the efficiency of administrative action. It is, however, necessary to notice that, in the course of its work, the Audit Department carries out a valuable examination of government contracts and trading operations, and Sir Gilbert

Upcott, a former Auditor General, told the Select Committee on Procedure in 1946 that this was now "one of the leading functions" of his officers.¹

The documents on which the auditors work are the various accounts which the departments are required to keep. They constitute records, in terms of pounds, shillings and pence, of all administrative action everywhere. Accounts audited or scrutinized include the basic Appropriation Accounts, stocks and stores accounts, trading, ship-building, manufacturing and commercial accounts, the accounts of many state-aided bodies, and many others. The figures are supplemented by explanatory reports, notes and appendices, and the Auditor General has a statutory right of access to "documents relating to the accounts",² a right to which practice and Treasury Minutes have laid down as the limits only the Auditor General's discretion. Under the hand of the skilled auditor, these accounts and sources of information appear to reveal enough for Parliament's purposes.

To list the accounts which come under audit or scrutiny would give no adequate picture of the range of the Audit Department's examination, nor does it help much to say that it audits three thousand million pounds' worth of expenditure annually and has general powers of scrutiny over much more. The figure gives little clue to the vast and complicated web of financial transactions which must be examined, or to the various types of expenditure needing different degrees of checking. They range from accounts of debt operations, needing little scrutiny, to those of new and complicated trading transactions, or concealed subsidies, which require careful examination to discover even their extent.

It is further necessary to notice that, though it is said that the Audit Department "audits" the accounts, the procedure differs considerably from normal commercial procedure. It is both a "test" and a "running" audit.

Most departments have accounts branches and most of the routine checking of vouchers and accounts is done in-

¹ H.C. 189-1 (1945/46), Evidence, Q. 4310.

² Exchequer and Audit Departments Act, 1866, s.28.

ternally and, by statute, may be accepted by the Auditor General. Both for this reason, and because of the growing magnitude of the task, increasing reliance has been placed on a system of percentage or other test audits, combined with a close investigation of methods and systems of checking and safeguards used in the departments themselves. These features, though present almost from the beginning, have been much developed during the last ten years and the present "radically revised system"¹ of test audit is claimed to be efficient and economical and has satisfied both the Treasury and the Accounts Committee.

In practice, too, the examination is not a post-mortem check. Over the years, a smooth system of "running" audit has been gradually evolved. The auditors, working in the departments, follow up expenditure closely. They receive information on all payments and contracts made and they check registers of bills paid. These consist mostly of normal transactions the like of which they have seen many hundreds of times before. If they see anything unusual or irregular they "draw papers". Their enquiries are almost always, in the first instance, informal. If a telephone call or a visit does not satisfy, the point is followed up by semi-official correspondence and only serious matters rate a "reference sheet", that is a formal, official enquiry. In all cases, the amount and type of information requested is a matter for the discretion of the Auditor General. This running audit enables the Audit Department to keep abreast of expenditure and to pursue investigations before transactions are history.

On the result of the audit, the Auditor General annually certifies the accounts as correct, subject to whatever reservations he cares to make, and writes his reports. Accounts and reports are then presented to the House of Commons by the Treasury, are referred by the House to the Accounts Committee, and are published.

In their present form, the Auditor General's reports explain the outcome of the year's transactions, giving total

¹ Fourth Report of the Public Accounts Committee for 1945/46, H.C. 172 (1945/46), para. 2.

figures, reveal the extent and results of the audit, set out the circumstances leading up to any departmental request for an "excess vote", and contain his personal comments. These comments are intended to be mainly informative and to put before the Accounts Committee the relevant facts of doubtful and disputed cases of importance. Matters on which comment may be expected today include important occurrences which are topical, interesting or obscure, matters of accounting or financial principle which are in dispute, transactions where heavy loss has occurred or might occur, and new spending and departures from settled habits and procedure.

Little not mentioned in the reports is ever discussed by the Accounts Committee and thus, in practice, the Committee has its agenda and lines of enquiry chosen for it in expert fashion and after a thorough sifting process. The points it considers are only those which remain outstanding and unsettled after a year's audit and investigation. In this respect it has a unique advantage over other financial committees which have often been hard put to it to know where to start. The Select Committee on Procedure of 1932 was "quite clear that the effective work done by the Public Accounts Committee is largely due to the fact that they have at their disposal the reports and investigations of the Staff of the Comptroller and Auditor General".¹

It remains to examine the Public Accounts Committee and to see how it is organized and equipped to consider the subjects brought up to it by this detailed and expert process.

(To be concluded)

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DICEY ON THE PUBLIC ACCOUNTS

"The general result of this system of control and audit is that in England we possess accounts of the national expenditure of an accuracy which cannot be rivalled by the public accounts of other countries, and that every penny of the national income is expended under the authority and in accordance with the provisions of some Act of Parliament." A. V. Dicey in *Introduction to the Study of the Law of the Constitution*. (London, 1885.)

¹ H.C. 129 (1931/32), para. 10.

CONSTITUTIONS OF THE BRITISH COLONIES—III THE FAR EAST AND PACIFIC AREA

Information prepared by SYDNEY D. BAILEY, with a prefatory note by the Rt. Hon. LORD KILLEARN

In his Foreword to the first article in this series the Secretary of State for the Colonies noted that British colonial policy does not fall into a neat pattern. Nowhere is this more true than in the Far East and Pacific area, the subject of the following paper. It is not only that territories for which His Majesty's Government is responsible in this vast region differ markedly in their racial, social and economic conditions—factors which make for diversity in the nature and stages of political evolution—but many of these territories are influenced, to a greater degree than in most other parts of the Colonial Empire, by developments in adjacent foreign countries.

My own connection with the Far East began 48 years ago, when I paid my first visit to Japan. At various times I have served in Japan, in Siberia, in China, and in Singapore; and my duties have brought me into close touch with the problems of British Colonies in that part of the world. It has to me been a fascinating study to observe the application of the great British traditions of law and order, of good government, and of political evolution, to Asiatic peoples who maintained such close contacts with their kinsmen in their homelands and who clung so tenaciously to their own traditions. In dealing with these problems there was ample scope for our colonial authorities to demonstrate, as they did with great success, the British genius for compromise and for the empirical approach. My experience has convinced me of the importance of principles over forms: what we have to offer the peoples of these Colonies is respect for the Rule of Law, respect for the spirit of toleration, and faith in education and in democratic institutions as means towards social well-being and political health.

The significance of our task in these Colonies transcends its local results. To anyone who believes, as I do, that on relations between

East and West depends the future of our civilization, our colonial responsibilities offer a proving ground for the compatibility of Western political philosophy with Asiatic and Pacific culture and traditions. Here, to my mind, lies the importance of studying the Constitutions of the British Colonies in these regions.

KILLEARN.

* * * * *

B RITISH Colonial territories, trust territories, and protectorates in the Far East and Pacific area fall into the following regional groups:

- (i) Territories in **South-East Asia**, i.e., the Federation of Malaya, Singapore (including Christmas Island and the Cocos-Keeling Islands), North Borneo (including Labuan), Sarawak, and Brunei.
- (ii) **Hong Kong**.
- (iii) **Fiji** and the territories within the sphere of authority of the High Commissioner for the **Western Pacific Islands**, i.e., the Gilbert and Ellice Islands (including the Phoenix and Line Islands), the British Solomon Islands Protectorate, the Kingdom of Tonga, the New Hebrides, and Pitcairn Island.

Other territories in the Pacific for which the British Commonwealth countries are responsible are Nauru (a joint Trust Territory of the United Kingdom, Australia, and New Zealand), New Guinea (Australian Trust Territory), Norfolk Island (Australian Colony), Papua (Australian Protectorate), and Western Samoa (New Zealand Trust Territory). For the sake of convenience the constitutional position in these territories is included with the territories listed above which are the responsibility of the United Kingdom.

In these territories there are a total of between nine and ten million people. The South-East Asian territories account for about seven million, of whom nearly three million are Malays, a similar number are Chinese, some six hundred thousand are Indian, and about fifty thousand are European or part-European. Singapore is virtually a Chinese city, and in Malaya there are nearly as many Chinese as Malays.

Hong Kong is overwhelmingly Chinese in population. In the British Pacific Islands live about half a million people, of whom two-thirds are Pacific Islanders. There are about one hundred and thirty thousand Indians resident in Fiji, and throughout the islands there are about thirteen thousand Europeans or part-Europeans, and four thousand Chinese.

Much of this territory, including Malaya, Singapore, North Borneo, Sarawak, Brunei, Hong Kong and certain of the Gilbert and Ellice and the Solomon Islands fell into Japanese hands in the early stages of the war. The Japanese claimed to be liberators and promised to eliminate all Western influences and to establish a Co-Prosperity Area in Asia.

The reaction of the peoples of the occupied territories varied. Some, at considerable personal risk, resisted Japanese attempts to wipe out free political institutions. Some took the Japanese promises at their face value. Some decided to exploit the situation and to collaborate with the Japanese so long as the Western allies were in retreat. Many remained aloof from the political contest: for them life was a continuous struggle against poverty, disease, and other social ills.

The Japanese left behind them a legacy of political mistrust and lawlessness. For years it had been a patriotic duty to sabotage communications and production: suddenly it became an offence. For years one of the surest ways of currying favour with the Japanese conquerors had been to denounce the Western democracies: now to do so was at variance with the obvious efforts of the Colonial Governments to restore political liberty and a reasonable degree of economic justice. For years the youth had been encouraged to join the resistance movements which had been supplied with allied arms: now the guerrillas were expected to hand in their arms and resume a peaceful existence.

The difficulties in the way of political advance were increased by the complexity of the pre-war constitutional structure. Malaya had consisted of four loosely federated States and five unfederated States in treaty relations with Britain, and a Crown Colony consisting of widely separated Settlements; Borneo was composed of Labuan, constitutionally

a British Settlement, and three Protected States—Sarawak, which was administered by a British Rajah, Brunei, which was constitutionally a Malay State, and North Borneo, which was administered by the British North Borneo Chartered Company.

In Malaya, after an abortive attempt to create a Union of the nine States and two Settlements, a Federal Government has been constituted, and Singapore is administered separately as a Crown Colony. Sarawak has been ceded to the British Crown: the British North Borneo Chartered Company has transferred to the Crown its Rights and Assets and the territory has become a Colony, in which Labuan has been merged: Brunei remains a British Protected State but is no longer regarded as part of Malaya.

In May, 1946, a Governor-General was appointed to promote the co-ordination of policy and administration in an area including the Malayan Union (now the Federation of Malaya), Singapore, North Borneo and Sarawak, with the Protected State of Brunei. In May, 1948, the title was changed to Commissioner-General and the functions previously discharged by the Special Commissioner in South-East Asia were added.

Hong Kong also endured the Japanese occupation, but in its neighbourhood the end of the war with Japan has not meant the dawn of peace. Beyond its frontier the Chinese Communists have steadily taken over territory previously occupied by the *Kuomintang*, and Hong Kong has been crowded with refugees.

By contrast the Western Pacific territories have enjoyed a period of comparatively peaceful reconstruction and development. In the Solomon Islands a primitive nationalist movement has been active, but only in one island has the movement taken firm root. Coordination of policy and administration of the Western Pacific Islands is undertaken by a High Commissioner who is concurrently Governor of Fiji.

It is necessary to repeat the words of caution which prefaced the two earlier papers in this series. First, the need to present the information in summarized form inevitably makes it incomplete. Secondly, constitutional changes in the

Colonies are constantly taking place. I have outlined the constitutional position as it was in January, 1950.

Constitutions of the British Colonies in the Far East and Pacific

BRITISH SOLOMON ISLANDS. *Protectorate.* Southern Solomons proclaimed as British protectorate in 1893. Northern Solomons captured from Germany by Australian forces in 1914.

<i>Population:</i> Pacific Islanders	94,738
European	118
Chinese	109

94,965 (1947 estimate)

Resident Commissioner: Acts under the authority and control of the High Commissioner for the Western Pacific.

Legislature: There is no legislature, laws being enacted by the High Commissioner in the form of King's Regulations.

Advisory Council: Consists of the Resident Commissioner and not more than seven members, three of whom may be officials.

BRUNEI. *Protected State.*

Population: 40,670 (1947 census) mainly Malay, Bornean, and Chinese.

British Resident: Chief administrator of the State. His advice must be asked and acted upon in all questions other than those affecting the Mohammedan religion.

State Council: Consists of the Sultan, who presides, the British Resident, and ten other members.

CHRISTMAS ISLAND. *Dependency of Singapore.* Annexed in 1888. Incorporated with Singapore in 1900.

<i>Population:</i> Chinese	924
Malay	213
Others	79

1,216 (June, 1949)

Administered by the Governor of Singapore.

COCOS-KEELING ISLANDS. *Dependency of Singapore.* British settlement began in 1823. Declared a British possession in 1857. Placed under control of Ceylon Government in 1878, of the Governor of the Straits Settlements in 1886; incorporated with Singapore in 1903.

<i>Population:</i> Malay	1,736
Others	27

1,763 (June, 1949)

Administered by the Governor of Singapore.

FIJI. *Colony.* Annexed in 1874 at request of the Chiefs.

<i>Population:</i> Fijian	123,995
Other Pacific Islanders	7,497
Indian	129,761
European and part-	
European	12,689
Chinese	2,804
Others	626

277,372 (1948 estimate)

Governor: Possesses reserve powers. Is also High Commissioner for the Western Pacific.

Executive Council: The Governor presides and the Council consists of the Colonial Secretary, the Attorney General, the Financial Secretary, two other officials, and four unofficial members nominated by the Governor after recommendation from unofficial members of Legislative Council.

Legislative Council: The Governor presides and the Council consists of three *ex officio* members (the Colonial Secretary, the Attorney General, and the Financial Secretary), not more than thirteen officials nominated by the Governor, five Europeans (three elected and two nominated by the Governor), five Fijians nominated by the Governor from names submitted by the Council of Chiefs, and five Indians (three elected and two nominated by the Governor).

Council of Chiefs: Makes recommendations on Fijian affairs, and may be consulted on bills affecting Fijians before submission to the Legislative Council.

Fijian Affairs Board: Consists of the Secretary for Fijian Affairs (Chairman), the five Fijian members of the Legislative Council, and a legal adviser. The Board may submit recommendations to the Governor for the benefit of the Fijian people, and has the power to make regulations, subject to the approval of the Legislative Council.

Franchise (for the European and Indian members of the Legislative Council): Male British residents who are literate in English or an Indian language and have a small property or income qualification.

GILBERT & ELLICE ISLANDS. *Colony.* Protectorate established in 1892. Colony proclaimed in 1915.

<i>Population</i> : Pacific Islanders	34,989
European and part-	
European	663
Asian	142
Others	206
	<hr/>
	36,000 (1947)

Resident Commissioner: Acts under the authority and control of the High Commissioner for the Western Pacific.

Legislature: There is no legislature, laws being in the form of local ordinances enacted by the High Commissioner.

HONG KONG. *Colony.* Hong Kong Island occupied in 1841 and ceded by China in 1842; small area on mainland ceded 1860; "New Territories" on mainland leased for ninety-nine years in 1898.

Population: 1,860,000 (June, 1949), 99% being Chinese.

Governor: Possesses reserve powers.

Executive Council: The Governor presides and the Council consists of seven official members and four unofficial members (two of whom are Chinese).

Legislative Council: Consists of nine official and eight

nominated unofficial members, at least three of whom are Chinese.¹

FEDERATION OF MALAYA. *Federation of Nine Protected States and two British Settlements.* Comprises the nine Malay States of Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor, and Trengganu, with the British Settlements of Penang (and Province Wellesley) and Malacca. Penang ceded to East India Company in 1786; Malacca ceded by Dutch in 1824. Agreements were made with Perak in 1874 and with Selangor, Negri Sembilan, and Pahang in the following decade. In 1909 Thailand's rights in the Northern States were transferred to Great Britain. Agreements were made with Kedah, Kelantan, and Perlis in 1909, and with Trengganu in 1919. Relations with Johore were regulated by treaty in 1914.

<i>Population:</i> Malay	2,511,520
Chinese	1,952,682
Indian	550,684
European	10,924
Eurasian	10,580
Others	45,458

5,081,848 (June, 1949, estimate)

High Commissioner: Possesses reserve powers.

Federal Executive Council: The High Commissioner presides and the Council consists of three *ex officio* members (the Chief Secretary, the Attorney General, and the Financial Secretary), four other officials, and seven unofficial members appointed by the High Commissioner.

Federal Legislative Council: The High Commissioner

¹ In 1947 proposals for the institution of a Municipal Council partly chosen by popular election, and for the reduction of official membership of the Legislative Council to seven, giving an unofficial majority of one, were approved. Recently, however, new proposals have been put forward with the unanimous support of the unofficial members of the Legislative Council. They involve deferment of the Municipal Council proposals and the reconstitution of the Legislative Council on broader lines and with some popularly elected members.

presides and the Council consists of the *ex officio* members of the Executive Council, eleven other officials, the nine Chief Ministers of the Malay States, two representatives of the Settlement Councils, and fifty unofficial members appointed by the High Commissioner.

States and Settlements: The State Rulers have undertaken to govern under written constitutions. They are assisted by State Executive Councillors, and there is a nominated Council of State with legislative functions in each State. A Conference of Rulers is consulted on matters of special concern to the Malay States. Each Settlement has a Settlement Council with legislative functions, and a Nominated Council to act as an Executive Council in matters affecting the Settlement.

NAURU. *Trust Territory* of the United Kingdom, Australia, and New Zealand, on whose behalf the Government of Australia exercises full powers of legislation, administration, and jurisdiction.

<i>Population:</i> Pacific Islanders	1,379
Others	1,476
	<hr/>
	2,855 (June, 1947)
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Administrator: Appointed by the Australian Government and has power to make ordinances.

NEW GUINEA. See under Papua and New Guinea.

NEW HEBRIDES. *Anglo-French Condominium*, established 1906.

<i>Population:</i> New Hebridean Natives	c.45,000
British Nationals and	
Ressortissants	284
French Nationals,	
Ressortissants and	
Protected Persons	1,954
	<hr/>
	c. 47,238 (1948
	<hr/> estimate)

Resident Commissioners: There are British and French Resident Commissioners, subordinate to their respective High Commissioners, and under their joint controls is a Condominium Staff. The Resident Commissioners may issue Joint Regulations "for the maintenance of order and the good government of the Group".

NORFOLK ISLAND. *Territory of Australia.* First settled in 1788.

Population: 938 (June, 1947).

Administrator: Possesses reserve powers.

Advisory Council: Consists of eight elected members.

Franchise: Adult suffrage.

NORTH BORNEO (including Labuan). *Colony.* In 1872 the Sultan of Brunei ceded territory in North Borneo to a group of British traders. The British North Borneo Chartered Company was formed in 1881 and administered the territory until 1942 when North Borneo was occupied by Japanese troops. Labuan was ceded to Britain in 1846, incorporated in the Straits Settlements in 1907, became a separate Settlement in 1912, and became part of North Borneo in 1946.

Population: Bornean 206,444

Chinese 51,118

Malay 6,295

European 374

Others 14,955

279,186 (1931)¹

Governor and Commander-in-Chief: Possesses reserve powers.

Advisory Council: The Governor presides and the Council consists of the Chief Secretary, the Attorney General, the Financial Secretary, all *ex officio*, and such other members, official and unofficial, as the Governor may appoint. At the end of 1948, there were twenty-three appointed members, including on the official side, the three Residents, the Commissioner for Immigration and Labour, the Director of

¹ The total population was estimated to be 335,379 in 1946.

Agriculture, the Director of Public Works, the Director of Medical Services, and the Conservator of Forests, and on the unofficial side seven natives of the country, four Europeans, and four Chinese. In addition, to advise him on important questions of policy and of principle, the Governor has appointed an *Executive Committee* consisting of the three *ex-officio* members of the Advisory Council, with the addition of the Resident, West Coast, the Commissioner of Immigration and Labour, and three leading unofficial members of the Advisory Council.

PAPUA & NEW GUINEA. *Australian Protectorate and Trust Territory.* Papua and New Guinea are governed in an administrative union, whilst maintaining the identity and status of the Territory of Papua as a possession of the Crown and the identity and status of the Territory of New Guinea as a Trust Territory.

Population: Pacific Islanders—

Papua	300,000
New Guinea	750,000
	<hr/>
	1,050,000 (estimate)
	<hr/>
Others—Papua	3,239
New Guinea	6,200
	<hr/>
	9,439 (30 June, 1947)
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Administrator: Possesses reserve powers.

Executive Council: The Administrator presides and the Council consists of not less than nine officers of the Territory, appointed by the Governor-General of Australia, and holding their places in the Council during his pleasure.

Legislative Council: Consists of the Administrator, sixteen officials, three elected unofficial members, three unofficial members representing the interests of Christian missions, three unofficial native members, and three other unofficial members.

PITCAIRN ISLAND. *Colony.* Discovered in 1767, and occupied by mutineers of H.M.S. *Bounty* in 1790.

Population: European descent, 124 (1948).

Chief Magistrate: Appointed annually by universal suffrage.

Council: The island is administered under the High Commissioner for the Western Pacific by a Council consisting of the Chief Magistrate, two assessors, a secretary, and the Chairman of the internal committee.

Franchise: Universal suffrage.

SARAWAK. *Colony.* Sir James Brooke acquired this territory from the Sultan of Brunei in several stages from 1840 onwards, British Protectorate established in 1888. Ceded to Britain in 1946.

Population: Malay and Melanesian 133,029

Chinese 145,158

Sea Dyak 190,326

Land Dyak 42,195

European 691

Others 34,986

546,385 (1947 census)

Governor: Possesses reserve powers.

*Supreme Council:*¹ Consists of not less than five members, including the Chief Secretary and the Financial Secretary, both *ex-officio*. Other members are appointed by the Governor.

*Council Negri:*¹ Consists of the Chief Secretary who presides, thirteen other official members (including *ex officio* the Financial Secretary, the five divisional Residents, the Secretary for Chinese Affairs, and the Secretary for Native Affairs), and eleven unofficial members appointed by the Governor in Council.

SINGAPORE. *Colony.* Purchased for the East India Company in 1819, and ceded to Britain in perpetuity in 1824.

¹ Certain members of the Supreme Council and the Council Negri have places for life by virtue of the fact that they were already members when the Constitution was made in 1941.

<i>Population:</i> Chinese	761,962
Malay	119,623
Indian	70,749
European	10,923
Others	17,561

980,818 (June, 1949, estimate)

Governor: Possesses reserve powers.

Executive Council: The Governor presides and the Council consists of four *ex officio* members (the Colonial Secretary, the Attorney General, the Financial Secretary, and the President of the Municipal Commissioners), two other officials, and four unofficial members appointed by the Governor.

Legislative Council: The Governor presides and the Council consists of the *ex officio* members of the Executive Council, five official and four unofficial members nominated by the Governor, and nine elected members (three being elected by the Chambers of Commerce, and six by territorial constituencies).

Franchise: British subjects and persons born in the Federation of Malay, Brunei, Sarawak and North Borneo.

TONGA (or Friendly Islands). *Protectorate* established in 1900.

<i>Population:</i> Tongan (Polynesian)	44,395
Other Pacific Islanders	309
European	220
Others	634

45,558 (1948 estimate)

Privy Council: The Sovereign presides and the Council consists of the Premier, the Ministers of the Crown (at present three Tongans and one European), and two district Governors.

Cabinet: Consists of the Premier, who presides, the Ministers, and the two district Governors.

Legislative Assembly: Consists of a Speaker appointed by the

Sovereign, the members of the Cabinet, seven representatives of the nobles elected by their peers and seven representatives elected by the people.

Franchise: All literate male tax-payers over the age of twenty-one.

WESTERN SAMOA. *New Zealand Trust Territory.* Mandated to New Zealand in 1919, and since 1946 administered by New Zealand as a Trust Territory.

<i>Population:</i> Europeans	297
Samoans and part	
Samoans	74,832
Chinese	180
Melanesians	72
	<hr/>
	75,381 (March, 1949)
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High Commissioner: Administrator of executive government and president of Council of State and of the Legislative Assembly.

Council of State: An advisory body consisting of the High Commissioner and Fautua which meets to discuss matters of policy and all questions involving Samoan custom.

Legislative Assembly: Consists of a Samoan and elected majority and is enacting authority for legislation within the territory.

Franchise: Adult Europeans; Samoan members of Legislative Assembly are elected by Fono of Faipule, a body itself elected by male Samoans.

(*The first paper in this series, dealing with Colonies in the Western Hemisphere, appeared in Vol. II, No. 2. The second paper, dealing with the African Colonies, appeared in Vol. II, No. 4. The final paper will deal with British Colonies in the Mediterranean, Indian, and Atlantic Oceans.*)

THE AMERICAN GOVERNMENT—V

In this fifth extract from Our American Government: What Is It? How Does it Function? compiled by Representative Wright Patman and published by the United States Government Printing Office, the questions and answers are concerned with Procedure in Congress. Earlier issues of Parliamentary Affairs have included extracts relating to the Constitution, elections, and the States (Autumn, 1948), the Capitol, Government Printing, the Congressional Record, the Library of Congress, Patriotic Symbols, and the National Anthem (Winter, 1948), the Executive Branch (Summer, 1949), and Congress and its Committees (Autumn, 1949). There will be one further article to conclude the series.

Question: How are the rules of procedure determined?

Answer: The Constitution provides that each House may determine the rules of its proceedings. The parliamentary practice of the House of Representatives emanates from four sources: First, the Constitution of the United States; second, from Jefferson's Manual; third, from the rules adopted by the House itself from the beginning of its existence; and fourth, from the decisions of the Speakers of the House and from decisions of the Chairmen of the Committee of the Whole.

Question: What is a "gentleman's agreement" in Congress?

Answer: At many points procedure in the two Houses is governed not by printed rules but by oral agreements between individual Members or the membership as a whole. Thus, when a Member who wishes to object to a particular bill knows he cannot be present when the measure comes up, he may get another Member to object on his behalf. Or the party leaders may agree not to take up controversial measures or business of any consequence before a certain date. Announcement of such agreement is made on the floor, and this agreement is normally binding on all Members.

Question: What is the "previous question"?

Answer: A motion for the previous question, if agreed to

by a majority of Members voting, has the effect of cutting off all debate and bringing the House to a direct vote upon the immediate question or questions on which it has been asked and ordered.

Question: What is a "filibuster"?

Answer: "Filibuster" meant originally a buccaneer such as plundered the Spanish colonies in America, and later, adventurers who led private armed expeditions into countries with which the country from which they set out was at the time at peace. From this general idea, the term has come to be colloquially used to designate organized obstructionist tactics in legislative bodies. It is the practice of deliberately taking advantage of freedom of debate (in the Senate) with a view to delay or preventing action on a measure under discussion.

Question: What business can be transacted by unanimous consent?

Answer: Practically anything can be done in either House by unanimous consent—except where the Constitution or the rules specifically prohibit the presiding officer from entertaining such a request; for example, admission to the floor of persons not included in the rule on the subject; the introduction of persons in the galleries, and so forth. A majority of the bills are passed by unanimous consent. Sometimes a leader will ask unanimous consent to bring up for immediate consideration a certain bill. If any Member objects it cannot be brought up in that way. However, the Rules Committee can immediately present a special rule for the immediate consideration of the bill and when a majority of the Members of the House vote for the rule, the bill is considered under the terms of that rule, which suspends all other rules. Members are permitted to address the House and extend their remarks in the Congressional Record by unanimous consent. If a Member abuses any privilege that is granted to him by unanimous consent, such as putting too much extraneous matter in the Congressional Record, any Member can stop it in the future by objecting to his requests. However, the Member whose request is objected to can retaliate by objecting to all unanimous-consent requests until his request is granted;

or if a Democrat objects to a request made by a Republican, the Republican will sometimes object to all requests made by the Democrats only until his request is granted, and vice versa.

Question: What is the difference between a resolution, a concurrent resolution, and a joint resolution?

Answer: A joint resolution is the work of both Houses, which requires the approval of the President as other legislation and upon enactment has the force of law. A concurrent resolution requires the approval of both Houses, but not of the President. It is not public law, but deals with matters over which the two Houses have concurrent jurisdiction. A simple resolution is simply the action of a single Chamber upon a matter within its own jurisdiction.

Question: What is a deficiency bill?

Answer: A deficiency bill is one carrying appropriations to supplement appropriations which have proved insufficient. Appropriations are normally made on the basis of estimates for a year in advance, and it not infrequently happens that intervening legislation adds new functions, or unusual conditions may arise which exhaust the appropriation before 1st July, when the new fiscal year begins.

Question: What is meant by a "rider" on a Congressional bill?

Answer: A "rider" is an extraneous provision incorporated in an appropriation bill, with the idea of "riding" through to enactment on the merits of the main measure. The practice is very old; in 1837 a "rider" on the fortifications appropriation bill would have provided for the disposal of the surplus funds in the Treasury. Under the rules any item of appropriation in a general appropriation bill that is not authorized by existing law nor in furtherance of projects already in progress is subject to a point of order (this is often waived by a special rule in the House); and the same with any provision "changing existing law", unless it is germane to the subject and designed to retrench expenditures (the so-called Holman rule). Occasionally a "rider" becomes law without the point of order being raised.

Question: What are the stages of a bill in the House?

Answer: Following in brief are the usual steps in procedure:

(a) Introduction by a Member, by placing the measure in the "hopper", a box on the Clerk's desk; it is numbered and sent to the Government Printing Office and made available next morning at the document room.

(b) Reference to a standing or select committee.

(c) Report from committee—usually after hearing, either before the full committee or a subcommittee.

(d) Placing on the calendar—according to its classification as a revenue bill, private bill, etc. Occasionally a privileged bill is considered when reported.

(e) Consideration in Committee of the Whole, if on the Union Calendar—including general debate and reading for amendment, with speeches limited to five minutes.

(f) Second reading and consideration in the House—in the case of bills considered in Committee of the Whole, the second reading is had in committee. In either case, the bill is open to amendment after the second reading.

(g) Engrossment and third reading—the question is put by the Speaker as of course and decided at one vote. Any Member may demand reading in full. A negative vote at this stage defeats the bill as completely as a vote on passage.

(h) Passage—the question of the passage being put by the Speaker as a matter of course without motion from the floor.

(i) Transmission to the Senate, by message.

(j) Consideration by the Senate—usually after reference to and report from committee, reading, debate, and opportunity for amendment.

(k) Return from Senate with or without amendment—if the Senate rejects the House bill it so notifies the House.

(l) Consideration of Senate amendments by the House—either agreeing, agreeing with amendment, or disagreeing with each amendment separately.

(m) Settlement of differences by conference.

(n) Enrollment on parchment paper.

(o) Examination by the Committee on Enrolled Bills—

the chairman of the House and Senate committees each certifying as to each House bill examined that it has been found truly enrolled and the certifying by the Secretary of the Senate as to Senate bills.

(*p*) Signing—by the Speaker first in all cases, then by the President of the Senate.

(*q*) Transmittal to the President of the United States.

(*r*) Approval or disapproval by the President—usually after referring it to the Department affected for recommendation.

(*s*) Action on a bill vetoed—the House or Senate may consider the veto message at once, postpone consideration of the message to a day certain, or refer the same to a committee. If it fails to pass the House to which returned, by a two-thirds vote, no further action is taken.

(*t*) Filing with the Secretary of State on approval or passage over veto.

Question: What courses are open to the President when a bill is presented to him?

Answer: (*a*) The President may promptly sign it, whereupon it becomes a law.

(*b*) He may hold it without taking any action, in which case it becomes law at the expiration of ten days (Sundays excepted), without his signature if Congress is in session. (He may refuse to sign the bill because he disapproves of the measure and recognizes that a veto is either politically unwise or useless, or because he is undecided about the bill's constitutionality, as was President Cleveland on the income-tax law of 1894, and prefers not to commit himself).

(*c*) He may veto the bill.

Question: What is a "veto"?

Answer: The word "veto" is derived from the Latin and means "I forbid".

The President is authorized by the Constitution to refuse his assent to any measure presented by Congress for his approval. In such case, he returns the measure to the House in which it originated, at the same time indicating his objections—the so-called veto message. The veto goes to the entire

measure; the President is not authorized, as are the Governors of some States, to veto separate items in a bill.

Question: What is a "pocket veto"?

Answer: By the Constitution the President is allowed ten days (exclusive of Sundays) from date of receiving a bill within which to give it his approval; if, within the ten days, Congress adjourns and so prevents the return of a bill to which the President objects, that bill does not become law. In many cases, where bills have been sent to him toward the close of a session, the President has taken advantage of this provision, and has held until after adjournment measures of which he disapproved but which for some reason he did not wish to return with his objections to Congress for their further action. This action is the so-called pocket veto. President Roosevelt instituted a custom of writing on the copy of a bill which he did not approve "Disapproved and signature withheld". He felt that Congress should know the definite reasons for his disapproval rather than just have the bill pocketed without explanation.

Question: What becomes of the bill after it is signed?

Answer: The signed bill is sent to the Department of State. There (in the Division of Research and Publication) it is given a number as a public law and published forthwith as a "slip law"—i.e., in individual form. At the close of each session these are consolidated in a bound volume called United States Statutes at Large.

Question: Are all of the laws of the United States published in one book? If so, how may it be obtained?

Answer: All of the permanent laws of the United States of general application currently in force are supposed to be included in the Code of the Laws of the United States of America. After each regular session a supplement is published, cumulating all laws enacted since the basic volume. The Code and Supplements are published under supervision of the Committee on Revision of the Laws of the House of Representatives, printed at the Government Printing Office, and procurable from the Superintendent of Documents. The Code costs \$16.50 for the four large volumes.

REVIEWS

The Elizabethan House of Commons. By Professor J. E. Neale. Cape. 18s.

Professor Neale's examination of the Elizabethan House of Commons is the most important book on English Parliamentary history that has appeared for many years. It is a work of the highest scholarship, the fruit of long years of meticulous inquiry into an epoch of great significance in the history of Parliamentary evolution.

It is customary, and not incorrect, to consider the Stuart period as the most critical time in modern history for the survival of Parliamentary institutions. The English Parliament of the seventeenth century owed its survival very largely to the position it had built up in the later years of the sixteenth. This is an aspect of the matter over which the text-books have always been inclined to pass too lightly. The Tudors could manage their Parliaments, we learn, the Stuarts could not; Parliaments suddenly became much more difficult with the change of century and the change of dynasty; of course Elizabeth had had her little tiffs with the House of Commons; troubles were brewing before she died; but, all the same—so we used to generalize—Parliament under the Tudors was a relatively docile institution, kept well in hand by the Crown.

Professor Neale's brilliant and delightfully readable book reveals the Elizabethan House of Commons as the close and comprehensible forerunner of the Parliaments which defied and overthrew the Stuarts. It makes the later development comprehensible by revealing the country's social structure as reflected in Parliament and by showing how far already the Elizabethan House of Commons had ceased to be an instrument of the Crown.

The picture which Professor Neale draws, with plentiful concrete illustration from local and national documents, is in many ways different from our preconceived notions. In

the first place he points out that the creation of new Parliamentary seats, which has often been interpreted as a trick of the sovereign's for introducing Members attached to the Court party, was more often the reverse. New seats were created under pressure from the dominating families in order to accommodate their supporters or to gratify the local interests on which they partly depended. The sovereign was often reluctant.

The character of the House of Commons itself was, as Professor Neale points out, not at all like that of the average Third Estate. True "commoners" were in a minority on its benches, which were filled by the sons, cousins, brothers and more distant relations of the great. There were lawyers, of course, and some merchants, but, since the families who had risen to greatness in England during the sixteenth century despised neither trade nor the law, these men were often enough also attached to the new aristocracy by bonds of interest or kinship.

At this point it would be perilously easy to misunderstand the whole development of Parliamentaryism in England. What, it might be said, was the Tudor House of Commons a fraud? Was it not a House of Commons but an institution bearing that name which had been captured by the landed gentry? Where then is its virtue? What has become of the old theory of English history as the story of freedom broadening down from precedent to precedent?

This is indeed a fascinating paradox. Parliament survived in England precisely because of this change in the character of the Commons. The sixteenth and seventeenth centuries were the epoch of growing despotisms. In the interests of greater efficiency the idea of state centralization was triumphing everywhere, and mediæval representative institutions went down like ninepins before the new monarchic tyrannies. They went down precisely because the Third Estate, that which represented the people, did in many countries truly consist of the people, relatively humble citizens who could be intimidated and bullied, and who were cut off by social taboos and difference of interests from the surviving feudal

aristocracy who alone had the military power to defy the crown. But in England the equivalent of the Third Estate was the House of Commons, consisting of "commons" drawn from wealthy and noble families who were not afraid to defy the crown and were competent to do so. Owing to its wholly unorthodox character the English House of Commons could not be checked when it stretched out its hands for control of the King's policy.

So much for the general aspects of the case. The great value of Professor Neale's book lies in his examination of the men who filled this uncommon House of Commons. Although they were drawn from a relatively small section of the population their interests and connections reached every part of English life, local and national, agricultural, commercial and manufacturing. They were in close sympathy with the needs and aspirations of the nation. This is evident, for one thing, from the examples which Professor Neale gives of contemporary electioneering methods. There was a good deal of family rivalry, some rowdiness between supporters of contesting local great ones, much jockeying for position, and some sly dodges by returning officers, but almost no bribery and corruption in the eighteenth century or modern sense.

Space does not permit a full description of the details of this remarkable book in which a whole society is brought to light. Professor Neale has cleared away some misapprehensions as to the character of the Elizabethan House of Commons at a critical time and shown how, in a peculiarly effective manner, Elizabeth's lively and often obstreperous Parliament reflected the needs and moods of the nation, with which its Members were in touch at every level and in every sphere, during a period of rapid national change and expansion.

Popular institutions vary from age to age. It is easy to misunderstand their nature by measuring them against our own ideas and methods. The essential is that they should represent the needs of their own time and be capable, as the years go on, of expansion, growth and change from within.

C. V. WEDGWOOD.

(Miss C. V. Wedgwood, F.R.S.L., F.R.Hist.S., is Deputy Editor of *Time & Tide*)

George III, Lord North and the People, 1779-80. By Professor H. Butterfield. Bell. 30s.

Creevey. Selected and re-edited by John Gore. Murray. 21s.

My Friend H. By Michael Joyce. Murray. 21s.

The period covered by these three books, the late eighteenth and early nineteenth centuries, is probably the most important in the development of our parliamentary history. During it took place the transition of the House of Commons from a body controlled through pocket boroughs, bribery and intimidation by an oligarchy of aristocratic landowners to one which was based on the more representative vote of a large proportion of the middle classes; from a House unassured even of equality with its rival components of Parliament, the Sovereign and the Lords, to one whose position was obviously destined to be that of the dominant partner. The means whereby the elected House gained this freedom and ascendancy were attended by many circumstances and incidents of a critical nature, when, at times, the threat of recourse to revolution appeared likely to replace appeal to constitutional means.

Professor Butterfield's study of *George III, Lord North and the People* is a lengthy and erudite analysis of a critical year or so within this period. Based entirely on original sources from which the author has drawn copious illustrations, the book has an especial value for the specialist in the period; the lay reader may at times feel somewhat overwhelmed by the detailed examination and scholarly comprehension which Professor Butterfield lavishes on this relatively short period. For him "Our 'French Revolution' is in fact that of 1780—the revolution that we escaped." Internally the threat directed against the respective existing regimes does appear to have certain similarities. In both France and England there were incompetent administrations, corrupt assemblies and selfish rivalries, which were nurturing a growing and widespread discontent with the political structure. But despite the exhaustive evidence which is marshalled as proof of a potential catastrophe similar to that in France some few years later,

one hardly feels that our crisis contained the same inevitable consequences. That long accumulation of discontent, basic and widespread, repressed and unrelieved, which festered in France, had the stamp of implacability which hardly characterized its English counterpart. Serious though our own situation was, one feels, despite Professor Butterfield, that that dynamic energy necessary to precipitate any cataclysmic strife was lacking in the causes and the characters of political leaders, both in Parliament and the country. The Whigs, in their bid for power, would go so far and no further; indeed were incapable of going further. The upper and middle-class leaders of agitation in the country were prepared to protest and petition, but not to encourage or lead the masses into any attempted *coup d'état*. Yet the agitation for reform, as Professor Butterfield shows, was, through such organizations as the Yorkshire Association of Wyvill and the Westminster Committee of Fox, widespread and replete with danger to the administration of Lord North. Though its fruits were at the time negligible, it served to direct attention to the grave vices in our political system, to formulate demands which were subsequently re-echoed, to provide illustration and example for the organization of future extra-parliamentary pressure in the field of political reform.

There were other crises, as Professor Butterfield shows, which contributed to the gravity of this period. The tea had been brewed in Boston Harbour and successive regiments of red-coated mercenaries chased across New England and Virginian fields, events which, humiliating though they were to national pride, were not perhaps viewed by the nation at large with that sense of calamity which retrospect tends to give them. The French and Spanish Fleets were in command of the near Atlantic waters, but, rotten though the morale and hulks of His Majesty's men and ships were, it is doubtful if the enemy were in much better shape. The Volunteer Movement in Ireland threatened to become a near-revolutionary instrument of economic demands and to transform that country into a springboard of invasion. And finally there occurred the more popular and less comprehensible

Gordon Riots with their attempt to coerce Parliament. Against such a background of circumstances we are given a picture of the fight of George III and Lord North in the arena of Parliament against the Whig and Radical elements which sought to overthrow the Administration. If at times this fits in a little vaguely and disjointedly with the account of the extra-parliamentary agitation, Professor Butterfield, with a judicious and scrupulous eye, has examined those political protagonists whose characters and actions have long been the subject of controversy. The result has been some additional delineation, particularly of George III and Lord North, which often provides a corrective to the more popular conceptions of the leading personalities of the period. In conclusion Professor Butterfield's volume, despite an over-emphasis on the gravity of the situation during 1779-80, is by its scholarly and comprehensive investigation an essential and primary historical work, not only on the period itself, but for an understanding of those later years when once again the battle-cry of reform was heard.

The Creevey Papers have, in this present volume, been "selected and re-edited" by the author from two former works, one, *Creevey's Life and Times* (1934), by himself, and the other, *From The Creevey Papers* (1903), by Sir Herbert Maxwell. Covering the period 1793 to 1858 the work forms, in some of its extracts, a useful continuation as a partial source book to those chapters in Professor Butterworth's volume which trace the political agitation begun in the House of Commons, but delayed by the long years of struggle against Napoleon's power. Creevey, himself a Whig Member of the House and acquainted with many of the foremost Whig politicians and their families, merits, like Croker and Greville, the gratitude of posterity for his assiduous compilation of accounts, reflections and correspondence relating to his time. His very industry indeed has set his editors and their publishers a formidable task. In 1903 Sir Herbert Maxwell selected from out of a vast mass of manuscript material enough to fill two volumes. Mr. Gore in 1934 heroically re-skimmed the cream to fill a third volume. The present work represents

a selection taken partly from Maxwell's volume and partly from that of Mr. Gore's 1934 edition. Where Maxwell appears to have "perfectly covered the ground" his selections, it is stated, have been included, especially when the chief interest was political. Particularly towards the end of Creevey's life, when his interest in politics was that of the retired statesman, or in years where political matters were of lesser interest, Mr. Gore has reprinted chapters from his own volume. The result appears to have been a none too ideal piece of editing, and one echoes Mr. Gore's own regret that he had not both space and time for all deserving "passengers and passages". Nevertheless, for the reader interested in the political and social life of the first thirty odd years of the nineteenth century, the volume is full of entertaining and instructive observations. To illuminate and humanize the broad pattern of historical narrative, such sources as Creevey are essential. And Creevey himself was in many ways an ideal commentator on the affairs of his period. Ubiquitous, observant and shrewd he possessed not only many of those qualities which fitted him to note and comment acutely on more intimate aspects of his contemporaries, but also a capacity to attract the confidences of young and old, male and female alike. Indeed, one is tempted to ask Mr. Gore that some day, despite the "execrable" nature of Creevey's handwriting, he will resume the inimitable and gay companionship of his subject, and give us a full length and definitive edition of the papers.

In *My Friend H.*, Mr. Michael Joyce has produced a most enjoyable and readable life of John Cam Hobhouse, Baron Broughton. Hobhouse was the contemporary of Creevey, but more radical in his political faith, though with the years he softened into a moderate liberalism. As Hobhouse was in his early manhood the friend of Byron, it is perhaps inevitable that a fair amount of attention should be devoted to his relations with the poet. Indeed, it is this friendship with Byron that has sometimes tended to obscure the importance of Hobhouse as a politician. Elected as a Radical for Westminster in 1818, that serious solid strain bequeathed him by his mercantile middle-class forebears began to assert itself after an early life

of "not immoderate riot" with the "wicked" Lord. His first chief interest was in factory legislation, and when the Whigs came ultimately into power he went to the War Office for a brief year, a post hardly congenial to one who had become associated with such unpopular agitation as the removal of flogging from the army. He had a further period in office as President of the Board of Control, but, pressed to keep his office against the rising talent of Gladstone's generation, he retired to the Upper House. There his active interest in political life rapidly diminished, and he turned more and more to family and literary interests. And thus there emerges from Mr. Joyce's biography the picture of Hobhouse, first the literary aspirant, ensnared though at times bewildered and repelled by the genius of Byron, then the earnest Radical, warm-hearted, sensitive but sincere, well-meaning and philanthropic, mellowing into the minor ministerial colleague of Melbourne and Russell. A pleasant and necessary tribute to one who, if not attaining high eminence, was of that stock of politicians essential to the progress of society.

J. D. LAMBERT.

The English Parliament. By Kenneth Mackenzie. Pelican Books. 1s. 6d.

The Parliament Book. By Guy Eden. Staples Press. 7s. 6d.

100 Facts on the Ballot Box. Smatterbook No. 23. General Editor: Charles Graves. Naldrett Press. 6d.

"Of the making of books about Parliament there is no end." So reads the publisher's blurb for Mr. Kenneth Mackenzie's excellent book. The volume of literature now available on the development of parliamentary institutions in Britain is a measure of the interest there is in the subject. And so great is this volume of literature that the most difficult problem facing the author of a new book on the subject is likely to be the choice of a title. All the best titles were used up long ago! Mr. Mackenzie calls his book *The English Parliament* which has the advantage of simplicity even if it suggests

that the Parliament of the United Kingdom is a monopoly of the English.

The book is "not a history of parliament, but a historical account of certain of its leading principles and features". As such it forms a valuable supplement to such books as *Our Parliament* which set out to describe how the British Parliament works today. It is interestingly and concisely written, with just the right amount of quotation from original documents to appeal to the general reader. Eight pictures are included. It has the great merit of only costing one shilling and sixpence.

The author is content for the most part to state the facts, but in one or two places he expresses a hope or an opinion. On the question of House of Lords reform he writes: "Some day, perhaps, the ancient right of the Crown to choose its councillors without regard to hereditary principle or political allegiance will be restored. A second Chamber consisting of life peers chosen for their eminence in every field . . . would have a sound historical basis and a strong claim to moral authority." Writing of the problem of Parliament and the public corporations, Mr. Mackenzie suggests that the solution might be for Parliament to fulfil its duty by the appointment of select committees to examine the administration of these boards.

My only complaint about this book is concerned with the "authorities" listed at the end of some of the chapters. These are of little interest to the general reader and somewhat perfunctory for the expert. It is, for instance, misleading to refer the reader to the 1938 editions of Jolliffe and Keir when both these books have appeared in new editions since the war. And surely Sir Ivor Jennings should be mentioned among the authorities for any book on the British Parliament?

The Parliament Book is an admirable guide book—to what? The Palace of Westminster? Yes, but more than that. To Parliament as an institution? Yes, but more than that, too, Mr. Eden has captured and kept alive in 160 pages the spirit of Parliament.

Mr. Eden is well qualified for the task he has undertaken, for he has worked since 1923 as one of that select body of men

known as lobby correspondents. It is typical of the British parliamentary system that these men, to whom Cabinet ministers can safely entrust secrets "off the record" and who interpret the proceedings of Parliament—as distinct from reporting them—have no official status. Yet their work is an indispensable part of the functioning of Parliament. But to work for a quarter of a century in the precincts of the Palace of Westminster is not in itself enough to qualify a man for doing what Guy Eden has done. In addition to being there, to knowing how Parliament works, to being familiar with the complications of procedure, a man must love Parliament if he would know her well and essay the task of capturing her moods, her whims, her unpredictable reactions and illusive atmosphere. Guy Eden not only knows Parliament but he loves it, and that is why he has written a good book and he has written it the right way.

The Palace of Westminster in which Parliament meets takes up the first half of the book, and in his tour of the building Mr. Eden pauses on every page to entertain and instruct the reader with a reminder of some historical event intimately linked up with the growth of Parliament, a growth which is in large part the story of a long struggle between the Crown and the representatives of the people.

Some idea of the drama which sometimes takes place in the House of Commons can be obtained from the pages in the second part of the book when the author describes the House at work and tells of such famous scenes as the abdication of King Edward VIII and what happened when Chamberlain was invited to Munich. Incidentally, Mr. Eden in his next edition should put a footnote to his description of the latter event. There was one man who did not "jump up and cheer"; there were others who walked out.

The Editor of the "Smatterbooks" series writes in the introduction to 100 *Facts on the Ballot Box* that "the object of Smatterbooks is to present in a convenient form a collection of essential facts. . . Each fact is important. . . All are accurate".

A collection of facts can of course be as propagandist in

its consequences as a first class collection of untruths. Indeed it is generally recognized that the basis of all good propaganda is careful selection of the truth. The anonymous author of *Smatterbooks* No. 23 is obviously a fervent believer in the system of proportional representation, and 70% of the facts collected in this book will appeal most to those who share the author's views on this subject. I happen to be well disposed to the idea of experimenting in Great Britain with the alternative vote, but I am under a moral obligation to inform readers of *Parliamentary Affairs* that it would be possible to collect at least an additional fifty facts on the Ballot Box setting forth the merits of the majority system of voting.

STEPHEN KING-HALL.

The Story of Our Parliament. By Agnes Allen. Faber. 8s. 6d.

Mrs. Allen has sought to apply the technique of the historical novel in this book for children, in which she labours to make palatable the dry facts of parliamentary history and procedure by embodying them in a form of fiction.

The book opens gaily with Mr. Bennett hurrying through his breakfast and off to the office, leaving his two young children, Margaret and John Bennett, in the clutches of a know-all schoolmaster, Mr. Morrison, and of Uncle Charles, who has just been elected a Member of Parliament. So far all is jam. But by page 15, the young pair are being given gregory powders in the form of the Great Council of 1265 and Simon de Montfort's summons to the cities and boroughs to send representatives to Parliament. By the time they are stomaching details of the Reform Bill of 1832 on page 18, Mrs. Bennett providentially arrives and "ordered the children off to bed". Upon which, obedient John looks wistful and wishes he could attend the House of Commons when Uncle takes the oath.

Mrs. Allen's two children speak like creatures of indifferent Victorian fiction. On being shown over the House of Commons by their mentors, they utter dutifully the twin expressions "Gosh" and "Coo" at the hours of sitting, at the payment of

knights of the shire and at the fact that a stonemason became a Member of Parliament. Even the immortal Eric's language might be held to border on impropriety if placed side by side with the following dialogue:

"'I don't see what they have debates for at all if people can vote without listening to them', began Margaret rebelliously. 'And anyway—'

"'Oh, do dry up, Margaret', said John, 'and let Uncle Charles tell us about Divisions. Go on, Uncle Charles.'

"'Well—where was I? When a question has been debated, the Speaker "puts the motion to the House" . . . "'

Alas, Uncle Charles has misled the children. When a *motion* has been debated, the Speaker puts the *question* to the House. This small discovery tempts us to analyze the gregory powder itself in order to find out whether Mrs. Allen's literary offspring are being dosed with the true purgative of knowledge or some inefficacious substitute.

Describing a Bill's introduction in Parliament, Mrs. Allen makes Uncle Charles say on page 103:

"'When the item on the Order Paper, "That such and such a Bill be read for the first time" is reached the Speaker reads out the motion and the Minister introducing the Bill bows. Then the Speaker says, "Those in favour say Aye, those to the contrary No." Nobody says anything whatsoever, and the Speaker says, "The Ayes have it."'

"The children looked at Uncle Charles in bewilderment. Then John burst out laughing.

"'You do things in a funny way in Parliament', he said."

We would sincerely agree with John if Mrs. Allen's description remotely tallied with the truth. But it is a jumble of inaccuracy, which could have been avoided by sending John to buy the official Manual of Procedure in the Public Business (pages 118-119) laid on the Table by Mr. Speaker for the use of Members, and freely sold to intending authors by the Stationery Office.

Similarly, when on page 30 Mrs. Allen informs us that the Clerk of the House has a private residence in the building, we can only assume that she was relying on a very out-of-date

guide book, instead of the modern official guide. It is hoped that Mrs. Allen does not insist on her description of procedure under the Parliament Acts, on page 106; recent legislation has rendered this passage obsolete. When she teaches on the same page that a Bill which is passed by the Commons is marked "*Soit baille aux Seigneurs*" we can assure her that this is not so: the House of Commons is sensitive about its acute accents, even in the employment of Norman French. Mrs. Allen talks about the Controller of the Household, but good children should learn to spell it "Comptroller"; and she has no authority to amend the title of the Outlawries Bill (page 134).

There are wooden pips in the jam, too. To enliven a description of the House of Lords, Mrs. Allen makes a character say:

"That is the Bar of the House of Lords, and that is where Joyce (the broadcasting traitor) stood. . . ."

Should not the paragon children have been made to retort that appellants in the Supreme Court of Appeal do not stand at the Bar? Counsel would be most embarrassed by such proximity; and Joyce, in fact, sat in an obscure corner of the benches available for the public.

Again, though the pages of the book are interspersed with pen and ink drawings, they are scarcely educative. In one of these, entitled "Front bench privilege", a Member is seen reclining on the front Opposition bench with his feet on the dispatch box. This is not part of the custom of Parliament; it may be that leaders of the Opposition have rested their hands on the dispatch box, but they are not simians.

These comments are perhaps enough to indicate that Mrs. Allen is not yet mistress of the seemingly irregular but, in fact, precisely regulated household of parliamentary affairs.

There is another and more general criticism. A good teacher may make a few slips and get away with it. But is Mrs. Allen a good teacher? She has undertaken to tell the story of Parliament, and it may be argued that the way to do so is to present facts. In this book, facts are so mingled with fiction that even an adult might be puzzled, and neither the

facts nor the fiction have been well sorted. Pugin and Fenton are mentioned. Pugin, of course, assisted Barry the architect; but Fenton is the surname of Uncle Charles. In a book which covers seven centuries in 185 pages of largish print, neither of these names would appear to be really necessary.

The children of today are serious and prepared to learn. But they are quick to discern any instructional device which seems to them like hoodwinking by adults, and it will not be long before they guess that in this book the "story" is a fairly transparent device to force knowledge down their throats. At that point most children will begin to lose interest. The plain story of Parliament, if presented without tinsel trappings, is still great enough to stand up to the test of childish impatience.

T. G. B. COCKS.

(*Mr. T. G. B. Cocks, O.B.E., is a Clerk in the House of Commons.*)

Can Parliament Survive? By Christopher Hollis, M.P.
Hollis & Carter. 9s.

Mr. Christopher Hollis's recent book has already received much publicity. It has been well-deserved publicity, and one's only complaint can be that it has given the impression that the book is a detailed statement of the case for a reform of Parliament. It is nothing of the sort. Mr. Hollis has many virtues—he has much that is new to say about old subjects and some new ones to explore, he writes with verve and wit and gusto, he manages to be both a Tory and an intellectual, and, while violently partisan about his own ideas, he is never too *parti pris* for those of other people; but attention to detail and concentration upon a single, important, but fairly narrow theme are not amongst them.

He can never resist chasing a hare, even if usually for no more than half a field or so. As a result, we find passages like the following: "If labour is to be kept on the land, a way must be found of offering a career in agriculture to the man of ability. Smallholdings are useful for some people . . . it is one of the virtues of the new mechanized farm that it provides many jobs intermediate between that of farmer and worker . . .", in a chapter headed "Reform of the Constitution".

We have Mr. Hollis's views on most of the main events of English history in the past 300 years, on Guild Socialism, on the economic predominance of the United States, on the balance of power within the Labour Cabinet and on a host of other subjects, as well as a brilliant posing of the, to him, central problem of the disintegrating effects of the new world of large units upon human society—all crowded into 148 pages. In these circumstances it is not surprising that he should be able to spare only nine pages for his constructive proposal for the reform of Parliament.

What is this briefly-expressed proposal? It is to set up a House of Industry, with members elected to it on some corporate plan, to delegate all industrial and most detailed economic questions to it, and thus to set the House of Commons free to discuss, with nineteenth century leisure, such purely political questions as the second half of the twentieth century may throw up. "The model for it (the House of Industry)" writes Mr. Hollis, "is the Assembly of the Church of England". The House of Commons would retain the same right of veto over the legislation of the new House as it has over that of the Church Assembly.

The analogy is apt only in so far as it exposes very clearly some of the disadvantages of Mr. Hollis's proposal. He points out that, by this century, "owing to the general growth of ignorance", theological knowledge had become confined to a few, and that it was therefore ridiculous for Parliament to discuss detailed ecclesiastical affairs. This may be true, but it is also the case that the impact of the Church of England on the lives of a great number of people had declined very sharply. What was anomalous about the 1927 debates on the Prayer Book, for instance, was not that the speakers lacked expertise—this was in no way the case—but that the great majority of members had no real concern for the subject on which they were called upon to vote.

This is certainly not so with industrial questions. Detailed knowledge about them may not be as high as it should be, but their impact on the lives of everybody is immense, and it is tending to increase rather than to diminish. A Parliament

up-to-date and authoritative account there is of private bill legislation in the Imperial Parliament. In my opinion every reference library on parliamentary practice should contain these two volumes. Their value to Parliamentary Agents and solicitors connected with the promotion of Personal Bills cannot be overstated.

Alterations of procedure at Westminster often become reflected in other parliamentary institutions: this is no doubt the reason why Mr. Clough gives special prominence in his Journal to such changes. Therefore the student of procedure and those wishing to keep informed of the trend of parliamentary practice should read this Journal.

R. L. OVERBURY.

(Sir Robert Overbury, K.C.B., is Clerk of the Parliaments.)

Political Opinion. By the Association for Planning and Regional Reconstruction, with Henry W. Durant. Allen & Unwin. 10s. 6d.

This publication aims to present the facts of the last four general elections in an easily available form and to give some analysis of their implications. Much painstaking work has obviously been put into the preparation of the maps and tables of which it chiefly consists; but the results are disappointing. The authors do not seem to have envisaged their task with sufficient clearness, and so their presentation lacks form and unity. It is a little difficult to see what they are really getting at, and the significant parts of the work are not easily separated from the routine stuff to be found in the usual reference books.

The Introduction starts off on the wrong foot by suggesting that neither cartography nor "pictorial statistics" has hitherto been applied to politics, and by giving, with the implication that it is exhaustive, a list of published quantitative work on politics that could easily be doubled in length. Such naïvetés do not inspire confidence. However, the Introduction contains what is probably the most interesting and potentially useful section of the work: an analysis of the voting in 1945, based on

which was completely to abandon control over them to another House would become a caricature of a sovereign body, while if it were to maintain *effective and frequent* use of the right of veto, the power and usefulness of Mr. Hollis's new House would be largely nullified.

It may be that Parliament is ill-organized for the modern world, and is therefore losing prestige. It is difficult to believe that it could regain this by hiving off its responsibility for the major domestic problems of the day.

ROY JENKINS.

(*Mr. Jenkins was elected Member of Parliament for Southwark Central in April, 1948.*)

Journal of the Society of Clerks-at-the-Table in Empire Parliaments. Edited by Owen Clough, C.M.G. Butterworth. Annually, 30s.

I am glad of the opportunity to call the attention of readers of *Parliamentary Affairs* to the *Journal of the Society of Clerks-at-the-Table in Empire Parliaments*.

This Journal, edited by Mr. Owen Clough, C.M.G., late Clerk of the Senate, Union of South Africa, is published yearly. It deals with matters of general interest which have occurred in the various Empire Parliaments, with special emphasis on those connected with procedure. For example the current volume (No. XVII) of the Journal contains articles entitled "Standing Orders of the House of Lords relative to Private Bills, etc."; "The Parliament Bill, 1947-1948"; "House of Commons Procedure 1948"; "Canada: House of Commons Procedure, 1948"; and "Hybrid Bill Procedure", all concerned with this subject.

The first of these articles includes a brief history of the office of Chairman of Committees and describes the proceedings of the House of Lords on Personal Bills, Special Orders and Special Procedure Orders. No other published source exists which gives information on these matters. This article is a companion to the one which appeared in Volume XIV of the Journal and together they form the most

two Public Opinion Surveys, one made before the election and the other during the interval between the polls and the counting of the votes. But each "sample" included only about one elector in twenty thousand, which, allowing for the heterogeneity of the electorate in respect of age, sex, education, occupation, etc., seems hardly adequate. Moreover, nothing is stated as to the method of sampling, so that we cannot judge to what extent the persons questioned did in fact form "a representative microcosm of the whole electorate." The facts that no Forces electors were included, and that the men considerably outnumbered the women, seem to throw some doubt on this.

The division of the country into regions for statistical purposes has probably been done as well as is possible; but it is doubtful whether any real significance attaches to such a division. Much stress is laid on "barometer" constituencies, and the figures about them are interesting; but it is difficult to see to where this all leads. If we could have a miniature general election in these constituencies it would be another matter.

The format of the publication—pages roughly eleven and a half inches by nine inches, with smaller interleaves, the whole secured by ring binding—is highly inconvenient for the bookshelf. No doubt it was adopted to give as large a page as possible for the maps, but these, though excellently drawn by Kitty Boole, are still far too small for their purpose, and they contain detail so microscopic as to be practically unreadable. Imagine all the results of four general elections in the 62 London boroughs compressed into a square of little more than one centimetre side! The typography is good, though the tables are set in inconveniently small type. A more normal size of book—say demy octavo—with much larger folding maps would have been more serviceable.

To sum up: the book is interesting and, up to a point, useful. But it could have been so much better.

J. F. S. ROSS.

(Dr. Ross is the author of "*Parliamentary Representation*".)

An Introduction to Public Administration. By E. N. Gladden, M.Sc. (Econ.), Ph.D. Staples Press. 12s. 6d.

The purpose of this short book is to fill the gap between those volumes upon Constitutional History and Theories of Government standing at one end of the shelf and the smaller works on the day to day business of a Civil Servant at the other end. The author specifically limits the class of his readers to those with no previous knowledge of the subject and he warns this audience that his book is an introduction and little more.

The gap on the shelves is wide. The subject extends over Central, Regional and Local Government and claims to include the fields of the Public Corporation and other quasi-public Commissions and Boards. It has another dimension, of depth, concerned with different levels of responsibility and discretion in each field of government and in result the whole subject has a breadth and complexity that may well have deterred others from writing at night of their labours by day. The book suggests the need for a team of collaborators to provide first hand experience in all fields and at many levels of industrial, clerical, executive and administrative work—a new Whitehall Series perhaps—but in the meantime the author offers this digest of much reading and thinking related to his own experience.

Measured against the standard of its own expressed purpose this book has a definite value for students, despite some obvious limitations. To the reader anxious for first hand knowledge it offers a condensed account of what Public Administration looks like at the executive level. Much of this condensation is well done and ably illustrated by charts but some, particularly at the higher levels, suffers from major omissions and absence of perspective. The book assumes that Administration is limited largely to the carrying out of instructions and the supervision of staff, and this assumption leads to a chapter on Cabinet Control (or the Administrative Brain) which conceives that power is completely centralized and Departmental autonomy a blessed memory. The heavy condensation attempted in this book results in some unevenness of treatment, in the overweighting of some items included and the omission

of others important to any sound understanding of the whole kaleidoscope. Yet if the student does what Dr. Gladden asks him to do, which is to use this book as a pattern of reality against which to study the books at the ends of the shelf, then the purpose has been well served provided the pattern is real. The student should not accept that executive Power is the key to government organization but should study administration by Consent; with this limitation he will find the book useful.

G. E. MILWARD.

Days for Decision. By the Rt. Hon. Anthony Eden. Faber. 9s. 6d.

Let Candles Be Brought In. By Sir Geoffrey Shakespeare. MacDonald. 21s.

Bermondsey Story. By Fenner Brockway. Allen & Unwin. 15s.

Except that these three volumes have to do with politicians and politics, they have not much in common, but each has a particular interest and all are certain to make a strong appeal to certain sections of the politically minded as well as to the reading public in general.

Mr. Eden's book is of outstanding importance in this year of the General Election. It has the great advantage of being the work of the Deputy Leader of the Opposition himself, and is not the rather slap-dash collection of bits and pieces we too often see sent out under famous political names. It is evident that the author has made a careful selection from his speeches and writings, and the result is a document of first importance. The book is divided into three parts covering Domestic Affairs, The British Commonwealth, and Foreign Affairs. In each of these spheres of political activity, Mr. Eden moves with authority and distinction and he still retains a remarkable personal popularity in all parts of the House of Commons. Members always give him an attentive hearing and thus some of the best things in this book are his Parliamentary speeches on the Economic Crisis; Nationalization; and The House of Lords. Reports of speeches in the country provide us with Mr.

Eden's interpretation of Conservative policy. In January last year Mr. Eden left London for a Commonwealth tour which lasted several weeks, and the section dealing with that tour is of exceptional interest. Altogether this is an important and timely volume which will be welcomed by the author's supporters and political opponents, alike for the man and the matter.

It was my good fortune to be in the 1929 Parliament, and that gives me a special interest in the other two volumes on this list. Both Sir Geoffrey Shakespeare and Dr. Alfred Salter (who is the hero of Mr. Brockway's story) were also there. Mr. Shakespeare sat with a band of well-known Liberals, and Dr. Salter was one of the many M.Ps. sponsored by the then very influential Independent Labour Party.

The pretty title of the Shakespeare autobiography refers to long ago days in Parliament, pre-electricity days of course, when "Let Candles Be Brought In" was the parliamentary motion to secure the illumination of the Chamber when darkness fell. It is not the fault of the author if he has failed to shed light on many public men and certain public affairs, for this is a very full and informative book. It is very well written, too, and I have rarely enjoyed more any political autobiography. For some years the author was secretary to Lloyd George and he has many interesting stories to tell of the great Prime Minister of the first world war. Sir Geoffrey paints on a large canvas, but he needed to do so for he has crowded much into his busy public life. For seventeen years he represented Norwich in Parliament (1929-45) and served altogether in seven departments under four Governments. At the end of the book the author has added a chapter on his distinguished father, Dr. J. H. Shakespeare, the eminent statesman of the Baptist denomination; and there is much else in the book beside political matters. It abounds with good stories and many excellent illustrations. It would be a pity for anyone interested in the events and personalities of the last thirty years to miss this vastly entertaining volume.

Mr. Fenner Brockway brings to his task a practised and careful style. His patience has enabled him to write a valuable

story of Bermondsey and of Alfred Salter who had so much to do with the Borough, as doctor, in local government matters, and as its M.P. for many years. If the first interest of this book must be for Londoners and Labour pioneers, the story told is one which will well repay reading by a much larger public. If there is a complaint to be made about the book it is that it abounds in too much detail but, doubtless, that very detail will help to establish *Bermondsey Story* as a valuable sociological document. In any case, a conscientious biographer of Salter had so much to tell, for here was a man who lived, fully lived, in several spheres though to most his name is likely to be longest remembered as that of an uncompromising pacifist. Alfred Salter lived just long enough to learn of Labour's great electoral triumph in July, 1945, but within a few weeks of that news his ardent career had closed and he died on August 24th leaving behind him Bermondsey sorely stricken by the effects of war but bearing, amid ruins and misery, the promise of a rich fulfilment of the vision and work of a man who declined fame and fortune in Harley Street to serve Bermondsey.

GORDON LANG.

(The Rev. Gordon Lang was Member of Parliament for Oldham, 1929-31, and for Stalybridge, 1945-50.)

Australian Government Today. By Geoffrey Sawer.
The Concept of Sovereignty. By G. V. Portus. **The
Planned State and the Rule of Law.** By W.
Friedmann. Melbourne University Press (London:
Cambridge University Press). 2s. 6d. each.

The several attempts made by the Socialist Government at Canberra during the past six years to amend the Constitution with a view to substituting a unitary for a federal system of government have provoked a widespread interest in administrative practices and political theories that is in marked contrast to earlier attitudes. One result has been a considerable output of studies of Australian affairs which has gone far to

meeting the complaint that there was little literature available in these fields for overseas students.¹

The three pamphlets, the subject of this review, are "the first of a series of informative booklets to be issued from time to time . . . dealing with various aspects of contemporary Australian Affairs . . . with which Australian writers and thinkers are now concerned".

Australian Government Today, by Assistant Professor Sawyer, deals critically and comparatively with Federal, State, and Local Government in the Australian Commonwealth. As such it is an admirable introduction for those who wish to know how the Federal system works; to what extent Parliamentary methods have diverged from the practices of the Mother of Parliaments; what peculiar influences are produced by a system of compulsory voting; and why local government has been comparatively neglected. The chapters on the "New Despotism", and on "the Liberty of the Subject" should be compared with Professor Friedmann's treatment of these matters in his booklet.

It is inevitable that by attempting to cover the whole governmental canvas of the Commonwealth and the States, Professor Sawyer's picture should suffer from compression. He rightly stresses the Federal Constitution as a "Compact", for only by that approach can the interpretation by the High Court of the Constitution be understood. Nevertheless this section hardly does justice to the serious political stresses caused by the persistent and unsuccessful efforts of the Socialists between 1942 and 1948 to alter the Constitution.

There are some inaccuracies, of which two of the more important may be noted. On page 23 Professor Sawyer says that the New South Wales Legislative Council may delay *taxation bills* for a month, after which they become law without its approval. This provision applies only to Appropriation Bills. Indeed the amending legislation of 1932 had two main

¹ The series of studies published by the Australian Institute of Political Science, annually since 1933, together with *The Australian Quarterly*, is a noteworthy exception, but since the several books comprise papers and discussions at the Institute's Summer and Winter Schools, they lack comprehensiveness and continuity.

objectives. The first was to prevent the abolition of the Legislative Council without a referendum, and the second was to impose a check upon taxation. If there is a deadlock on taxation bills, the government must either withdraw or submit its measures to a referendum of the electors.

On page 43 Professor Sawyer says that both Brisbane and Sydney have established a single metropolitan authority for local affairs. Sydney has no such body, and the Cumberland County Council which he mentions is merely concerned with "planning" the future growth of the Sydney metropolitan area by such methods as zoning green belts, determining industrial areas, and locating road and rail communications. He does not mention that the City of Newcastle, a dense industrial area in New South Wales, has a single metropolitan government which is operating successfully.

The Concept of Sovereignty is the Presidential Address to the History Section of the Australian and New Zealand Association for the Advancement of Science by Professor G. V. Portus, at the meeting held in Perth in August, 1947.

It is a delightfully written essay and traces the changing content of the idea of sovereignty throughout the ages, as well as the different senses in which the word has been used. Of special interest is his attempt to find where sovereignty lies in federations such as the United States of America and Australia.

Professor Portus would like to drop the word altogether from political discussions, for he says that the real question is not the nature of sovereignty but the *locus* of power in a community.

In dealing with the place of the national sovereign State in the World of States, Professor Portus argues that allegiance to a sovereign state is not incompatible with allegiance to a World Government; in this case, we should not invoke the theory of sovereignty at all, but should deal with the type of World Government on its merits, remembering that the State is not an end in itself but mainly a means for enabling the ordinary citizen to obtain the maximum of satisfactions from its activities.

The Planned State and the Rule of Law by Professor Friedmann is an irritating essay. The author is aggressively concerned to denounce Professor Hayek's concept of a planned society and its effect upon the rule of law, and to align himself with some present-day critics of Dicey's treatment of the Rule of Law. Professor Friedmann, like Humpty Dumpty in *Through The Looking Glass*, insists that when he uses a word it means just what he chooses it to mean. Consequently his legalistic discussion of the planned state and the rule of law never gets to grips with those who doubt whether liberty can ever be real in the planned state of the Socialists.

In the last four pages (cf. pp. 27 *et seq.*) Professor Friedmann concedes the main claims of the critics of planning, and by a development of that part of his essay he might have made a real contribution to elucidating the extent to which the threat to liberty is contained in such matters as the direction of labour, and the throttling of criticism by allocating newsprint or by suppressing electoral comment immediately prior to an election as has been done by the present Socialist Government in New South Wales.

Professor Friedmann concludes by suggesting ways and means for reconciling planning with "democratic principles of justice". He urges that the privileges of the State should be reduced to the absolute minimum; that there should be proper control of administrative discretion; and that the State, as business manager of vast enterprises, must renounce the "shield of the Crown".

The Melbourne University Press is to be commended upon its enterprise, and it may rest assured that further booklets in this series will be welcome.

F. A. BLAND.

(Professor F. A. Bland, M.A., LL.B., is Emeritus Professor of Public Administration, University of Sydney.)

Congress in Action. By George H. E. Smith and Floyd M. Riddick. Manassas, Virginia: National Capitol Publishers Inc. 75 cents.

The subtitle, "How a Bill Becomes a Law", is an apter

description of the paper-backed booklet by Smith and Riddick than its title, "Congress in Action". A comic strip with cursory embellishment of text, it follows in cartoon form the adventures of a Bill in Congress on its rough road to becoming a Law. Unfortunately, the personality of the bruised and battered Bill overshadows the more important one of Congress, which remains the merest shadow. An amusing if not very successful attempt at mass education, it should give a British reader a very genuine feeling of sympathy for American Presidents as they struggle to secure from the antiquated and ponderous machinery of Congress action prompt enough for the requirements of modern times.

DAVID C. WILLIAMS

Eyewitness No. 12: The Opening of the Canadian Parliament. 16 mm. sound film (717 feet) made by the National Film Board of Canada and on hire from the Hansard Society.

Brains Trust on Parliament. Speakers: W. J. Brown, M.P., Frank Byers, M.P., R. H. S. Crossman, M.P., Sir William Darling, M.P., William Gallacher, M.P., and Commander King-Hall. Album containing ten unbreakable, double-sided 12-inch gramophone records. Hansard Society. £6 10s.

A Bill is Passed. Map Review No. 93. The Bureau of Current Affairs. Obtainable from the Hansard Society. 1s. 6d.

Houses of Parliament. Filmstrip No. 178. British Instructional Films Ltd. Obtainable from the Hansard Society. 10s.

The demand for information on the working of the parliamentary system grows daily, and a variety of instructional media (in addition to books, pamphlets, and periodicals) for use in schools, colleges, youth clubs and the like are now available. The Hansard Society has for some time been aware of the need for good documentary films on different aspects of British parliamentary democracy and which would include scenes taken in the Palace of Westminster. Until a film of this

nature is produced we cannot do better than refer those interested to the excellent documentary film noted above. The film was taken inside the Canadian Parliament Building and shows, among other things, the reading of the Speech from the Throne and the introduction of new Members.

The gramophone records noted above were made at a Hansard Society Youth Conference. A great many controversial problems of parliamentary government are discussed by speakers with first-hand experience of the House of Commons. Sets can be purchased or hired from the Society.

The Bureau of Current Affairs' *Map Review* (in reality a large poster) on how a bill becomes law was prepared in consultation with the Hansard Society. It presents in pictorial form the various stages through which a proposal to change the law passes—the departmental discussions, informal consultations with interested groups, the drafting of the bill in the office of the Parliamentary Counsel, its various stages in both Houses of Parliament, and the giving of the Royal Assent. The process of law-making is briefly explained in the text and is illustrated by a picture of each stage and a facsimile of part of some relevant document. The text also includes a number of questions designed to stimulate discussion of the principles of the parliamentary system. The poster as a whole shows clearly the machinery by which the law is changed, though inevitably little can be done in the space available to emphasize the unwritten customs of parliamentary democracy and the spirit which enables it to function.

The filmstrip prepared by British Instructional Films Ltd., is concerned with the Palace of Westminster. It consists of twenty-nine pictures of the Palace together with a plan of the building, and is accompanied by some useful "Teaching Notes". The pictures are of good quality and the strip as a whole gives an excellent impression of the building in which the two Houses of Parliament meet. There is an unfortunate reference in the "Teaching Notes" to *Lord Robert Peel*.

Copies of the film, gramophone records, and filmstrip may be hired from the Hansard Society. Details of the conditions of hire can be obtained from the Secretary, 39 Millbank, S.W.1.

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THE JOURNAL OF THE HANSARD SOCIETY

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HANSARD SOCIETY NEWS

BY STEPHEN KING-HALL

Chairman of the Council and Honorary Director

THERE are no spectacular developments to report this quarter although at least two questions are rising above the horizon of our activities which may lead to important expansions in our work.

One of these is the growth of a desire amongst German politicians to see in Germany a society capable of undertaking work for the advancement of parliamentary government comparable to that which is done by the Hansard Society. As might be expected—and this should interest our members—these German politicians are those who, having visited the United Kingdom during the past two years under the auspices of the Hansard Society, have seen our work at first hand. The extent to which the Hansard Society can assist in this German development is now under discussion by the Council.

The work of the Society is continuing to increase to such an extent that it was considered advisable to strengthen the Council by inviting the following gentlemen to become co-opted members until the next Annual General Meeting: they accepted the invitation.

The Rev. Gordon Lang, M.P. for Stalybridge and Hyde.

Sir Stanley Reed, K.B.E., M.P. for Aylesbury, 1938-50.

Sir Norman Scorgie, C.V.O., C.B.E., Controller of His Majesty's Stationery Office, 1942-9.

An interesting episode in our membership department was the receipt of a note from Mr. George Bernard Shaw (already a member of the Society) expressing a desire to pay his annual membership dues in the form of a seven-year covenant. When this covenant ends Mr. Shaw will be 100 years old, and the Council have informed him that he will then be invited to become an honorary life member. We shall look forward to offering him a reception on that occasion.

Our publications department is as active as lack of working capital allows. Since the last issue of *Parliamentary Affairs* we have published two new pamphlets for schools, *Questions on Parliament* and *Answers to Questions on Parliament* by K. Gibberd. These pamphlets cost 6d. each (4d. to members of the Society). We should like to hear of anyone who, without the use of the "crib" but with the help of books, is able to answer 95 of the 100 questions correctly.

Japanese and Italian editions of *Our Parliament* have now been published bringing the total of all editions of this classic to 53,000, made up as follows: English 23,000, German 7,000, French 8,000, Spanish 5,000, Japanese 5,000, Italian 5,000.

Two additions have been made to the series of select bibliographies on parliamentary government: they relate to Scandinavia and Ceylon, and cost 3d. each.

The Parliament of France by D. W. S. Lidderdale is now in the press and will be published in September. The provisional price is 12s. 6d. (less 33 $\frac{1}{3}$ % to members), and advance orders can be accepted.

The Council has reluctantly decided not to proceed with the preparation of a book or gramophone record commemorating the official opening of Hansard House last December. Although many members expressed a desire to possess both these productions, the general response was not sufficient to justify the Council in going ahead.

The Council hope that members will inspect our new Headquarters when they are passing this way. Hansard House is on the Thames Embankment, a hundred yards east of the Tate Gallery. Members visiting Hansard House will be able to examine a number of interesting papers and documents relating to the Hansard family. These have been presented to the Society by Mr. Arnold G. Hansard, one of the few surviving descendents of Luke Hansard. Among the books are Luke Hansard's Bible which includes the Hansard family tree, a book called *Typographia* by Thomas Curson Hansard, which was published in 1825, and four large folio volumes on the history of the Hansard family. The Council is greatly indebted to Mr. Arnold Hansard for the interest he has taken in the work of the Society.

THE BRITISH GENERAL ELECTION

23RD FEBRUARY, 1950

Limitations of space make it impossible to include in Parliamentary Affairs articles describing or analyzing all the parliamentary elections which take place from time to time in different parts of the world. Nevertheless we believe our readers, both in the United Kingdom and elsewhere, will expect that some space should be devoted in this issue to the General Election which took place in the United Kingdom on 23rd February, 1950.

The subject is so vast, and so many aspects of it deserve separate treatment, that we did not feel able to invite one author alone to survey the whole scene. Instead we asked a number of people who were directly concerned with the election to give their own impressions. The contributions which follow were written independently and are selective rather than exhaustive. The authors write from different political points of view; and their experiences of the election varied from observation to active participation. We leave it to our readers to judge what conclusions, if any, emerge from these statements.

The symposium begins with a brief statement of facts and figures. This is followed by the impressions of the election campaign from four candidates. There are then comments on the election written by officials of the three main parties. A political scientist concludes by giving his impressions as an observer rather than a participant.

1. THE FACTS IN BRIEF

Electoral Changes, 1945-50: A redistribution of parliamentary constituencies was effected, reducing the number of seats in the House of Commons from 640 to 625. The City of London was merged with Westminster for electoral purposes, thereby losing the privilege of sending two Members to the House of Commons. The principle of one man (or woman), one vote was established by the abolition of the University seats and the business vote. Legislation was enacted restricting the use of

motor vehicles for conveying electors to the poll and reducing the scale of election expenses for parliamentary candidates.

Date of election announced: 11th January, 1950.

Date of dissolution: 3rd February, 1950.

Nomination of candidates: 6th -13th February, 1950.

<i>Number of candidates:</i>	1950	1945
Labour	617	605
Conservative and associates	621	623
Liberal	475	306
Irish Nationalist	2	3
The Speaker	1	1 ¹
Communist	100	21
Others	52	124
	<hr/> 1,868	<hr/> 1,683

Date of polling: 23rd February, 1950. (Moss Side²: 9th March, 1950.)

Electorate (i.e., number of persons entitled to vote): 34,269,477 (1945: 32,836,419).

	1950			1945		
	<i>votes cast</i>	<i>% of poll</i>	<i>seats</i>	<i>votes cast (excluding University seats)</i>	<i>% of poll</i>	<i>seats at dissolution</i>
Labour ..	13,266,498	46.1	315	11,992,292	48.0	391
Conservative and associates	12,503,010	43.5	298	9,944,378	39.8	218
Liberal ..	2,621,489	9.1	9	2,245,319	8.9	10
Irish Nationalist	65,211		2	148,078		2
The Speaker ..	24,703		1	16,431 ¹		1
Communist ..	91,815	1.3	0	102,780	3.2	2
Others ..	198,666		0	529,671		16
	<hr/> 28,771,392		<hr/> 625	<hr/> 24,978,949		<hr/> 640

¹ Standing as Conservative, with Labour opponent.

² One of the candidates at Moss Side died before polling day and polling was consequently postponed.

Average votes per M.P. (to the nearest hundred) :

Labour	42,100
Conservative and associates	42,200 ¹
Liberal	291,600
Irish Nationalist	32,600

Largest Majority: H. E. Holmes (Labour), Hemsworth . . . 37,680.

Smallest Majority: W. R. D. Perkins (Conservative), Stroud and Thornbury . . . 28.

Forfeited Deposits :

Labour	0
Conservative and associates	5
Liberal	319
Communist	97
Others	39
	—
	460
	—

2. CANDIDATES' IMPRESSIONS

E. M. KING, *Labour Candidate for Poole*

I think it is the Apostles' and Nicene Creeds that divide mankind into the quick and the dead. I found the division convenient in assessing members of the audiences I strove to address during the first twenty-three days of February. On the whole most were quick; quick to see a point, quick to distinguish between slop and genuine regard for human rights; and, above all, quick to see that no Party was putting forward a programme radically different from its opponents. But it was an inherent weakness of the case put forward in all the party programmes that no real solution to our economic problems was expounded.

Among the quicks I remember with pleasure the question addressed by a bespectacled thirteen-year-old youth, not haply to me but to Lord Wilmot: "Sir", he said, "in the seventeenth century unsuccessful politicians were led to the block, and had

¹ Excluding two unopposed returns.

their heads chopped off. Can the candidate give me any good reason why this practice was discontinued?" It is true that the increased tenderness for human life, which was a product of the eighteenth and nineteenth centuries (though not of the twentieth), has brought with it some disadvantages.

And then there were the mentally dead. I cherish the recollection of the pink-faced Blimp in Canford Cliffs who put this to me—I think he meant it nicely—"Is it not a criminal thing for a member of one party to describe another as vermin? How can a candidate so apparently intellectual and gentlemanly as yourself associate with Mr. Ancurin Bevan?" and then with a snort of anger, "It is my opinion that the Labour Party and its adherents are all scum". Said a little differently this might have been quite witty, but the questioner genuinely could not see that he had said anything funny, or illogical, and was bewildered by the reception his question got. That question was symbolic of a tendency I must record, and regret. Compared with 1945 there were an increased number of electors genuinely incapable of seeing any point of view other than their own. Mortified, or financially injured, or not having gained what they had hoped to gain, they were not in a mood to seek the true economic cause, or even to reason about the cause. In 1945 this was not so. Among Socialists and Conservatives alike there were more selfish votes cast in 1950 than in 1945, and that is bad. It is also one of the reasons why candidates independent in character, or middle-of-the-road by conviction, had little success—and that from the point of view of Parliament as an institution is a pity.

But if that was a pity there is something else which is a tragedy—none of the parties have moved with the times. The central problem of 1900 was poverty. It was that problem which attracted the intellect, passion, and sympathy of Shaw, the Webbs, Keir Hardie, Lloyd George, Churchill, and many another progressive of that decade. The Labour Party in particular was born of hunger and want. Now all parties still behave as though poverty were still the central problem. It is not. The poor are not always with us—for the moment at least, there aren't any.

One problem today overshadows all others, peace and union between nations. There is a theme that could stir the hearts and heads of mankind, and to that problem neither the Conservative nor Labour Parties have made any positive contribution whatever. They haven't an idea. Thereby, they bitterly disappoint this little nation with a mighty heart.

Any party which can release the pent up medley of fear, emotion, and idealism latent in every breast on this subject will not only save the world. They will win an Election—hands down.

COMMANDER STEPHEN KING-HALL,
Independent candidate for Bridgwater

I stood as an Independent candidate, and it is from this point of view that my remarks are presented for the consideration of the readers of *Parliamentary Affairs*.

There were three candidates (Conservative, Labour, Independent) and the candidates averaged from four to two meetings a night. My opponents had more meetings than I did because in my case I felt that, since an Independent must stand or fall on his personality and his own views whereas party men must depend on personality plus a programme already generally familiar to the electorate, I should not have meetings of less than one hour's duration.

A rather high proportion of my opponents' meetings were the scene of friendly but fairly vigorous interruption, culminating sometimes in confusion: I had one interruption in the course of forty-one meetings. I usually spoke for three-quarters of an hour, taking up the line of explaining factually our problems, etc. and then inviting questions. I was impressed with the intelligence of questions which were those of persons genuinely seeking information. My references to the need of National Government were always warmly applauded. I was much encouraged by the size of the attendances at most of my meetings and by the sympathetic hearing I was given. I used to leave the meetings believing that I had collected a great deal of support, especially as I knew that many of those present were nominally supporters of one or other of the parties.

On some occasions I was given money by people who told me that they were doing this privately as they were well known to be party people.

When the votes were counted I realized how much I had deceived myself and that although I might have changed many opinions I had not changed many votes. I am now convinced that hundreds of people in the division regarded my meetings as interesting educational occasions (hence the orderliness) but not of much relevance so far as election day was concerned. I had a very strong impression towards the end of the campaign that a large number of the electorate did not understand why I was mixing myself up in what was clearly an inter-party fight all over the country. The following conversation remains in my mind:

Mr. X: "I congratulate you on your election address. It really says something. I've sent it to my brother in the Middle East".

Self: "Thank you".

Mr. X: "I consider that you are the best candidate on personal grounds. I have been following your writings for many years and I agree with your point of view on nearly everything. I thought I should like to tell you this because I'm sorry I cannot vote for you".

Self: "Why?"

Mr. X: "I am a member of the Executive Committee of the Conservative Association at . . . Of course if the University vote existed and I could give it to you, it would be yours. I am a graduate (Oxford) and I very much hope somehow or other you get into the House. You ought to be there. I should like to subscribe to your expenses. I'll write to your Treasurer. At any rate I can wish you good luck, and that I do".

HUGH LINSTEAD, O.B.E.,

Conservative Member of Parliament for Putney

George from the trade union branch came round to my meetings with his list of questions. When it was his night off, someone else took his place, but the questions were the same. My Young Conservatives went round to my opponent's meet-

ings and used the same tactics with, I like to think, more skill. (*Speaker*: Since 1945 the Socialists have reduced infantile mortality by X per cent. *Questioner*: The number of deaths in 1947 was Y thousand more than in 1946. Was that also due to the Socialist Government?). But these activities had no effect on the solid block of Conservatives nor on the similar block of Socialists. What made this election interesting was the attitude of the doubtful voters. They really were doubtful. They came to listen. They resented rowdy interruptions. In consequence, we had big and attentive audiences, crammed halls, and overflow meetings outdoors.

I spoke in three other constituencies and met organized opposition on the grand scale in one only. There my job was simply to tire the interrupters before the candidate came. They reached the stage of standing on chairs and waving their election posters, but I am sure the price paid was the loss of votes. The silent section of the audience reacted against them in the polling-booth. Indeed, too much propaganda, too much loud-speaker work, too many stunts in this election as in others lost more support than they won. The doubtful voter wanted arguments, not noise.

It was sad to realize how party propaganda has driven a wedge into the people. Factory meetings in the lunch hour left no doubt that the factory worker has been taught to divide his political world into exploited and exploiters. Hatred of opponents and disbelief in all they say has become a creed. Yet these factory audiences listened and occasionally, when a silence fell on a canteen of six-hundred or more, one realized that the instinct to give the other side a fair hearing was too strong to be submerged.

There is one clear impression left by this election: that we prefer a two-party political system. My own electorate has provided the Chancellor with four forfeited deposits in two elections. It must be Oxford versus Cambridge, Manchester United versus Chelsea, Reds versus Blues, a strong Government to govern and an Opposition nearly as strong to oppose. "So", says the man in the street, "we keep to the middle of the road, and the more nearly balanced the two parties are in the

House the greater the chance of my being left alone to earn an honest livelihood!"

Locally the two main parties may have a few thousand more votes each which could be polled with even better organization, but if we are broadly representative of the country, the present state of balance might continue indefinitely. The man in the street may be right. He may get what he believes to be a middle-of-the-road policy from an impotent government. But that is essentially the negation of a policy, and this election campaign has shown at least one candidate clearly where the ultimate reorientation of political forces must come. Many questions demonstrated that few Labour supporters feel deeply about nationalization as nationalization. That may worry the Socialist (distinguishing him on this point from Labour), but what the skilled artisan and the ordinary workers seek is some permanent assurance of a fair share of what is available for distribution. He doesn't mind directors, managers and shareholders getting their share, and as between private capitalism and State capitalism he prefers the one that provides most wealth for most people.

WING-COMMANDER EDWARD SHACKLETON, O.B.E.,
Labour Member of Parliament for Preston South

The 1950 General Election was the quietest and best behaved of four election campaigns I have taken part in. When I fought Preston in a by-election in January, 1946, some of my meetings were nearly broken up by organized trouble-making on the part of Young Conservatives—there was even a leading article in the local paper on election hooliganism. In 1950 the Young Conservatives had either disappeared or were more wisely employed than in obtaining sympathy for their opponents by preventing them from speaking. Indeed, the campaign was too quiet. I cannot recall being heckled in the proper sense of the word at all, and at the most I only had one or two interruptions, though some other speakers had a slightly rougher time of it. This might in some ways have been a bad sign (and perhaps it was) in that it showed that our opponents were working quietly, but certainly there was no lack of interest

and I have never had better meetings—in Labour areas, enthusiastic; in Conservative areas, quiet and interested. The Prime Minister's arrival at a packed meeting of from two to three thousand at the Public Hall was an occasion for a demonstration of enthusiasm which stirred even the old timers of the party.

The standard of questions was rather mixed. There was some slight attempt to identify the Labour Party with Communism which was rather futile seeing that a Communist had fought in Preston in 1945 and the same Candidate was fighting the new constituency in Preston North in 1950 also, where his intervention was one of the factors in losing the seat for Labour.

In 1945 the old double-member constituency of Preston was won, with a Liberal and Communist also standing, by a majority of a few thousands. In 1950 Preston North was lost by just under a thousand and I won Preston South by 149; but redistribution as in other Lancashire towns had considerably worsened the prospect for Labour, since new unworked and traditionally Tory areas had been added to the new constituencies. There is little doubt we should have held the old two-member constituency without too much difficulty. Even so, in the new part that was added to Preston South, despite its previous Conservative tradition, there was a strong Labour vote, most of which came out determined to be on the winning side for the first time, but the Conservatives also came out in strength as the 84% poll showed. In the more middle-class parts of the town, where there must have been considerable apathy and abstention in 1945, voting was very heavy.

Despite over-confidence on the Labour side, there was no lack of enthusiasm amongst Labour supporters, especially in the last part of the campaign, or unwillingness to vote, and in certain of the Labour wards there was a fine turn out of canvassers. On the actual day the rain set in from about four or five o'clock and this made the task of the knockers-up much more difficult. We were handicapped, too, by the shortage of cars, and it was only in the last few hours that we had our full complement, and many old and sick people who should have

been polled during the day were left until the last moment or not polled at all. In at least one outlying area, the Labour voters in a small community were not polled at all.

Only one attempt at a stunt by the Conservatives was made when a last minute leakage from one of the local council committees revealed a premature and somewhat tendentious threat to raise council rents, a local government issue which should not have been dragged into a parliamentary election.

I found the main issue in the election and the main fear amongst Labour supporters to be the threat of a return of unemployment, of the kind which Preston knew only too well in the past. The Conservatives for their part campaigned on the issues which generally speaking were universal throughout the country.

In conclusion I would say that while Labour lost little support and indeed in my new area gained a great deal more than had been expected, the decisive factor was the size of the Conservative vote as compared with what must have been a considerable abstention in 1945.

3. PARTY COMMENTS.

MORGAN PHILLIPS, *Secretary of the Labour Party*

To the Labour Party the result was frankly disappointing. But several factors emerge. We were returned as a Government, we achieved a larger aggregate vote than any single party in the history of British democracy.

I am convinced that many more of what are sometimes referred to as the "floating" voters would have cast their votes for the Labour Party had they been sufficiently well informed on more of the main issues. For more than twelve months before the election the hoardings had been covered with anti-Government posters, and leaflets on similar lines had been showering through the letter boxes. In many instances our canvassers found people who had not the slightest idea what was industrial assurance, some who confused it with insuring businessmen against losses, and others who thought it would reduce bonuses on their endowment policies. Misrepresentation of our aims was rife and I feel sure that we suffered as a result.

Redistribution had its effects, too, tending to make many strong Labour seats stronger and many doubtful seats more doubtful than ever from our point of view.

Although we regard the result as disappointing, inasmuch as we did not receive a stronger Labour majority, the results are not depressing. We have met a maximum onslaught and have held it, we have seen in detail the results of redistribution and we are confident that on a future occasion we shall achieve a far larger majority than we have at the present time.

In the meantime the people must be better informed. If I might say so here, I feel that the Hansard Society is performing a useful function.

The work of the Labour Party in office has aroused greater interest in public affairs than has ever previously existed. Witness the vastly increased vote. The people of today are more interested in *their* Government than they have ever been before. That is a good thing for democracy. It is something we appreciate and seek to maintain. In the long run it can do us nothing but good.

Between now and the next election, whenever that may be, we must see that the electors are better informed, and to this end we must expand our individual membership.

The Labour Party will never court popularity by making rash and baseless promises of additional benefits and reduced taxation. Our greatly increased vote in this election proves to us that we are on the right lines.

I am confident that by stating our case boldly and honestly we shall continue to win the confidence of the people, and finally a decisive working majority in the House of Commons.

Miss MARJORIE MAXSE, C.B.E.,
Vice-Chairman of the Conservative Party

The long postponed election opened drably. Preceded by governmental indecision, overcast by vague ministerial warnings about illegal expenditure, the dissolution of Parliament was succeeded by a phony period of three weeks when candidates, meetings and all election activities were muffled with inertia lest they incurred an election expense. Then coats and gloves

came off to grapple with the problems of the newly redistributed constituencies and political activities got into their stride.

One of the distinguishing features of this election was that it was an electors' election and not a politicians' election. Electors of all parties or of none approached it with a quiet determination to decide the issues for themselves and were little influenced by bombast, promises, or threats. As is traditional in British elections they appreciated humour and the quick retort, even though it was at their own expense. Apart from this the electors were in earnest and wanted to know the facts, though naturally enthusiastic supporters on either side cheered their speakers with more enthusiasm than their phrases always merited. The occasional hooliganism was disavowed and repudiated by both major parties. Courtesy from the platform, and policy rather than personalities, was the response to this attitude, and audiences left the speakers in no doubt about their reaction to personal attacks on individuals.

Never was a British election so beset by foreign observers of all kinds and from all countries. These were both impressed and puzzled by what was described at one Socialist meeting as "being on our best behaviour". In the North usually a keener and louder tone prevailed, but audiences listened and then put serious questions.

The dominant questions were housing, the cost of living, and the fear of unemployment, and on these points an exasperated electorate expressed itself bluntly. On the whole they were neither interested nor enthusiastic about nationalization and there was an understandable effort on the part of many Labour speakers to shelve this question.

Another interesting point was the determination of the whole country to rid itself of Communism, and the aversion to vote for splinter parties or independents. The reckless and irresponsible attempt to pile up a mass Liberal vote was foiled by the political sense of the British people. The system of nightly political broadcasts undoubtedly gave the electors an opportunity of listening in their homes to the different points of view and exercised a greater influence than in previous General Elections.

The electorate was thinking, and thinking hard. This is shown by the highest percentage of voting ever recorded at a General Election. Both the Conservative and Socialist Parties polled more votes than at any previous election—the Conservative increase compared with 1945 being 24.6% and that of the Labour Party 10.8%.

The election would have been fought entirely on domestic issues but for Mr. Churchill's speech at Edinburgh where he raised world issues and the necessity for a new approach to maintain peace.

To turn for a moment to the Conservative angle. Directly the Conservative manifesto *This is the Road* was published the initiative passed into our hands, and this, with our superiority in broadcasting, gave us an advantage which bore good results. Conservative candidates, trained and grounded in policy, stuck to the main issues and refused to be drawn into personalities. The middle indeterminate vote appreciated this sense of responsibility and set us on the road to victory.

It was good, but it must be better.

The Rt. Hon. LORD MOYNIHAN, O.B.E.,
Chairman of the Executive, Liberal Party Organization

There is no denying that the Election result was disappointing to Liberals. But it revealed that in spite of the fact that the electoral system is heavily weighted against the Liberal Party and in spite of the "split vote" propaganda of both the other parties, as many as 2,600,000 voters were prepared to stand firm and cast their votes for Liberal candidates. As a result of the fight put up by these candidates we have, since the election, formed vigorous local Associations where there was little activity before.

The number of our members in the House of Commons remains exactly the same, since one of our previous members held a University seat which has now of course automatically disappeared. But the Liberal vote has, as a result of the present "deadlock", assumed a much greater importance. The Liberal Members of Parliament, led by Mr. Clement Davies, judge each issue on its merits and as a consequence now constitute

the only free force left in the House in view of the elimination of the Independents.

But the Liberals once again must draw the attention of the public to the fact that their total vote in the country is not reflected in proportionate membership of the House of Commons. Mr. Churchill recently spoke of "the constitutional injustice" done to 2,600,000 voters and put forward the proposal for an enquiry into the whole question of electoral reform. This was a question, Mr. Churchill argued, which could not be brushed aside or allowed to lie—and we agree.

Not only the injustice done to the Liberal voters but also the deadlock between the Socialists and the Tories has turned other minds in the same direction, and methods of electoral reform are being canvassed on all sides. The Liberal Party prefers the system of Proportional Representation with the single transferable vote which has produced stable government for many years where it has been tried.

The paradox of the election result is that there would appear to be a mandate for Liberalism from the people without a strong Liberal Party to carry it out. There is a majority against Socialism but there is also a majority against a return to the Toryism of the inter-war years. Social reform without Socialism is probably the aim of the majority of the people of the country. Perhaps the deadlock will show how necessary it is to have a strong Liberal Party to work for this objective.

4. IMPRESSIONS BY

H. G. NICHOLAS, M.A.,

Lecturer in Politics, University of Oxford

We are probably still too near the General Election, with its excitements and frustrations, for an entirely just estimate of it to be possible. As someone conducting an academic inquiry into it, I certainly feel myself to be only halfway along the road to the answers I am seeking. There are few dogmatic conclusions which I have reached and many hypotheses which I still have to test under the heavy strain of hard facts. So I will content myself with recording a few personal impressions and exploring some of the fringes of my limited findings.

It was at once an easy and a difficult election to observe. Easy because the participants were kindly, even indulgently, disposed to the academic inquirer. My progress across the map of the election may be charted, in retrospect, by the hospitality and kindnesses of innumerable electioneers, high and low, official and unofficial. Moreover law, custom, and the mutual trust which animates so much of our public life guarantee that the important parts of our elections are the observable parts. The Gulf Stream of our political contests is not peopled by icebergs whose greater bulk lies hidden beneath the surface. Most of what one wants to know is free and open for anyone who will take the trouble to inquire and collect it.

But at another level, this was a deceptive election. Behind the "demureness" which Mr. Churchill noted there dwelt the intensity of interest which manifested itself in the record poll. Was one to blame for not recognizing this phenomenon sooner, for not anticipating that the voters of Coventry, for example, would need more ballot papers than had been printed? At meetings there had been, it is true, good attendance figures and keen, inquiring listeners. But even so Mr. Bevin's audience of six men, seventy-five women, and eight children, with which the Moscow radio made such jubilant play, was a figure which most candidates could parallel at one stage or another of their speaking tours. For days at a time the election gave first place, in the columns of the popular press, to items of other, not always political, news. The B.B.C. certainly whipped up no frenzy of excitement, either in its news broadcasts from which the election was virtually excluded, or even in its "election broadcasts" proper; Dr. Hill apart, these seem not to have created the stir that they did in 1945. The restriction on campaign expenditure kept the visual impact of the election down to a minimum. Posters, I should guess, were less frequent than in 1945, even if window cards held their own as a form of volunteer advertising. Lastly even literature, owing to the rising costs of printing and stationery, was a good deal less pervasive than in former campaigns. Yet, despite all this, when polling day came the voters turned out as never before. What made them face the tedium and the rain of February 23rd?

One answer, of course, is the record number of candidates and of contested seats. In more constituencies more varieties of political opinion were catered for than ever before. But against this must be set two statistical facts—that on the average the vote was no higher in constituencies which had three-corner contests, and no lower in those where the outcome was just as predictable, *mutatis mutandis*, as in Old Sarum. Another answer is the efficiency of the party organizations in “getting out the vote”. Yet if this means the carrying out, in the typical constituency, of a canvass even as complete as the average turn-out—*i.e.*, an 84% canvass—and the chivvying of these “pledges” into the booths on polling day, I am very sceptical of such an explanation. Even with the new professionalism of the big parties, even with the volunteer zeal which certainly manifested itself among party workers, I doubt whether there were more than a handful of constituencies in which there was a really reliable canvass of even 75% of the voters. The wholesome human disposition not to bother and not to be bothered is a shield which, however frail, still protects much of the electorate and conceals them from the view of all but the most penetrating of agents. And while real intimidation is extremely rare and doubt of the secret ballot persists only amongst the most or the least sophisticated, there is still in certain areas an inevitable social pressure towards outward political conformity—to Conservatism in Laburnum Villas, or to Socialism at Pithead View. Not all who say “Yes” to a canvasser put their cross in the same space on the voting paper.

For what might be called “the stay-at-home turn-out” one provision of the new Representation of the People Act deserves all credit. I refer to the postal vote; 400,500 valid postal votes were cast in England and Wales. This averages only about 740 a constituency, but I suspect that in many constituencies the postal vote (mainly mobilized by the Conservatives) may have been large enough to tip the balance. It would be interesting to know more on this. For light on another, much-debated provision, the new limits on campaign expenses, we still await fuller information. It is much to be hoped that publication of the returns made by agents will be more rapid after this election

than they were after 1945. Bald though the published details are, they would throw a good deal of light on the way in which the various parties in different types of constituencies exercised their ingenuity within the framework of the law. One sample budget which I have seen was divided up as follows: 45% Printing and Stationery, 14% Paid Employment, 10% Advertising, 5% Room hire for meetings, 4% Committee rooms, 5% Postage, 3% Transport, 7% Miscellaneous, 7% Emergencies. When in this budget the cost merely of printing Election Addresses amounted to £160 it is easy to see what little scope for manœuvre the prescribed maximum permits.

Transport, at least in country districts, seems to have been a serious problem. Not all candidates can have been as fortunate and as chivalrous as the one I heard of in the West Country, who got his people to the polls so early that he was able to lend his cars to his rival for the last couple of hours before closing time. It is also doubtful how enforceable the new law has been; the absence of petitions and prosecutions is hardly conclusive evidence, in itself, of scrupulous observance. Nor has the benefit of the restrictions always accrued to the pedestrian party; many Labour voters, in times past, have ridden to the polls in their rivals' cars.

But if, in this last particular, the ambiguities of the law may have provoked an occasional breach of the strict proprieties, that does not seriously detract from the generally high level of behaviour that has marked the election. This seems to be true whether one applies a legal or a moral yardstick. Not only has the law been kept, but sharp practices of all kinds have been at a discount. There has been little deliberate falsification, "stunting", name-calling, organized whispering campaigns, hooliganism, or stampeding of public opinion. This makes for dull "copy" for the newspapers. But, as February 24th showed, a close race does not lose but gains excitement by being conducted in strict accordance with the rules.

THE NEW INDIAN CONSTITUTION

by RAJENDRA PRASAD

(President of the Republic of India, formerly President of the Constituent Assembly)

ON 15 March, 1946, Mr. Attlee, the British Prime Minister, announced that a Cabinet Mission consisting of Lord Pethick-Lawrence, Sir Stafford Cripps and Mr. A. V. Alexander would be "going to India with the intention of using their utmost endeavours to help her to attain . . . freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision. . . . I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so. . . . But if she does so elect, it must be of her own free will. . . . If, on the other hand, she elects for independence, in our view she has a right to do so. It will be for us to help to make the transition as smooth and easy as possible."

In pursuance of this announcement the British Mission arrived in India shortly afterwards and, after prolonged negotiations, announced the convening of a Constituent Assembly consisting of members to be elected by the Legislative Assemblies of the then existing Provinces and of representatives of Indian States on the basis of one member for every one million inhabitants. The seats allotted to a Province were to be divided between Muslims, Sikhs and others in proportion to their population, to be elected by the representatives of these communities by proportional representation by means of a single transferable vote. The distribution of seats allocated to the States and the procedure for the selection of the representatives were to be laid down by negotiations.

The Constituent Assembly met for the first time on 9 December, 1946. The Muslim members who had been

elected on the Muslim League ticket, however, did not attend. Subsequently the British Government announced its intention to hand over power to popular representatives of India on a date not later than June, 1948. Finding that no arrangement acceptable to both the Indian National Congress and the All-India Muslim League was possible, it decided to create two Dominions of India and Pakistan. The Indian Independence Act was passed and the two Dominions came into existence on 15 August, 1947. The members of the Constituent Assembly representing the area falling within the territory of each became, with necessary adjustments, members of two separate Constituent Assemblies, each with plenary power to frame a Constitution for itself and also to pass any laws, including laws amending Acts passed by the British Parliament without reference to it. The Constituent Assembly of India proceeded to the completion of the work which it had started and finally adopted the Constitution on 26 November, 1949.

The Constitution of India comprises 395 articles and eight schedules. In framing the Constitution the Constituent Assembly has naturally taken advantage of the experience of other countries and drawn upon their constitutions. It has also drawn very largely upon the provisions of the Government of India Act, 1935. But in doing so it has taken care to adapt them to the conditions and circumstances in which the Constitution will be worked in India. It is a Federal Constitution and provides for a Union of States. Historically British India had a unitary government, and it was only under the Act of 1935 that a federation was for the first time envisaged. That federation was to comprise two classes of units, one class representing the then existing Provinces which had been parts of the unitary Government of India and had derived certain powers by devolution of authority from the Central Government, and the other comprising the Indian States which were in the position of more or less independent units which were to join the federation on certain terms. As it happened, the federal provisions of the 1935 Act never came into operation.

The Indian States were some 562 in number and covered nearly one-third of the territory and one-fourth of the popula-

tion of India before partition. One of the problems which the Constituent Assembly had to deal with related to these States, but during the period of nearly three years that elapsed between the first session of the Assembly and the final adoption of the Constitution big changes took place, and the States falling within the territorial jurisdiction of India or adjoining it not only acceded to India but have practically come on a par with the Provinces. A very large number of them have been integrated with the adjoining Provinces, others have formed Unions of their own and thus become integrated units. The Constitution describes all its component units, comprising both the Provinces and the Indian States, simply as States.

India is thus a Union of States, and the powers and functions of the Union and the component States are defined and delimited in detail. Schedule 7 gives lists of subjects which are within the legislative jurisdiction of the Union, within the jurisdiction of the States, and subjects over which both have concurrent jurisdiction. The Parliament has power to make laws dealing with all matters not under the jurisdiction of the State Legislatures, and where there is a conflict between Union and State laws in respect of matters within the concurrent jurisdiction of both, the law of the Union will prevail. There are also certain cases which are defined in which the Union may make laws regarding matters in the States, for example, when there is a Declaration of Emergency, or when there is a request or consent by a State Legislature, or when it is declared that it is in the national interest to do so, or for giving effect to international agreements. The executive power of the State is to be so exercised as to ensure compliance with the laws made by Parliament, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary not only for that purpose but also in some other matters, e.g., for the construction, maintenance or protection of means of communication of national or military importance. The powers of the States are thus subject to limitations, and the Union may assume powers in the circumstances defined even over State affairs and administration.

An important feature of the Constitution is the declaration of Fundamental Rights which are enforceable by the Courts, and the formulation of directive principles which, though not enforceable, are nevertheless fundamental in the governance of the country. It is the duty of the State to apply those principles in framing laws. The Fundamental Rights prohibit discrimination on grounds of religion, race, caste, sex, or place of birth. They provide for equality of opportunity to all citizens in matters of public employment, and the protection of rights regarding freedom of speech, assembly, association, free movement and residence in any part of the territory of India, and in respect of property rights and the right to practice any profession or to carry on any occupation or trade. They declare that no person shall be deprived of his life and personal liberty except according to procedure established by law and also provide against arbitrary arrest and detention. They prohibit traffic in human beings and forced labour, and the practice of untouchability in any form is abolished. They secure to all citizens freedom of conscience and the right freely to profess, practise and propagate religion, and the right of any section of the citizens of India having a distinct language, script or culture to conserve the same. They lay down that no person shall be deprived of his property save by authority of law. All these rights are subject to certain limitations which are defined and are considered necessary for the preservation of the state.

The directive principles are intended to secure a social order for the promotion of the welfare of the people. The state shall in particular direct its policy towards securing that its citizens have adequate means of livelihood, that the operation of the economic system does not result in concentration of wealth and the means of production, that the health and strength of workers and the tender age of children are not abused, that there is equal pay for equal work for both men and women, that just and humane conditions of work and maternity relief are provided, that village *panchayats* (councils) with powers to function as units of self-government are organized, that the economic and educational interests of scheduled

castes (the former untouchables) and scheduled tribes and other weaker sections of the community are promoted with special care, and that agriculture and animal husbandry are organized on modern and scientific lines. The state shall endeavour to promote international peace and security and encourage the settlement of international disputes by arbitration.

The Union Executive will have a President and a Vice-President who will be elected and will hold office for five years. The President will be elected by an electoral college consisting of the elected members of both the Houses of Parliament and the elected members of the Legislative Assemblies of the States. The President may be impeached for violation of the Constitution. In the event of the President's inability to discharge his functions, the Vice-President will act in his place. Like the American Vice-President the Vice-President will also be *ex officio* Chairman of the Council of States and may not hold any other office of profit. He will be elected by the members of both the Houses of Parliament assembled at a joint meeting, and can be removed from office by a vote of no-confidence passed by a majority of all the then members of the Council of States and agreed to by the House of the People.

Parliament will consist of two Houses—the House of the People and the Council of States. The House of the People will consist of not more than 500 members who will be elected directly by the voters in the States on the basis of adult franchise by territorial constituencies so as to give one representative to every 500,000-750,000 of the population. The Council of States will consist of not more than two hundred and fifty members of whom twelve will be nominated to represent science, literature, art, etc., and the rest will be elected by the elected members of the Legislative Assemblies of the States.

There will be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. Any Minister who is not a member of either House of Parliament for a period of six consecutive months shall cease to be a Minister. One of the important decisions which the Constituent Assembly had to take was whether the



Dr. Rajendra Prasad signing the new Indian Constitution
Courtesy: H.E. The High Commissioner for India



Dr. Prasad, having been sworn in as President, addresses the distinguished gathering in the Durbar Hall, New Delhi



Pandit Jawaharlal Nehru being sworn in as Prime Minister by Dr. Prasad

Courtesy: H.E. The High Commissioner for India

President should have powers similar to those of the President of the United States of America or should only be a constitutional head like the British King. The Assembly decided in favour of adopting the parliamentary system of Britain. It follows, therefore, that the Ministry must enjoy the confidence of the House of the People to which it is made collectively responsible, and the President has ordinarily to act in accordance with the advice tendered by his Ministers.

The Constitution lays down in detail the procedure for bills and other legislation which may be passed by Parliament. It follows the British model and makes the House of the People supreme. It lays down that money bills and financial measures shall be dealt with by the House of the People alone. As regards other matters, any difference between the two Houses is resolved by a joint session, and as the number of the members of the House of the People is double that of the members of the Council of States it follows by implication that it is the Lower House which will have the dominant voice.

The House of the People will elect from among its members a Speaker and Deputy Speaker. The Speaker will preside over its meetings and in his absence the Deputy Speaker will act for him. The Parliament will have a separate secretariat for each of its two Houses. The Council of States will elect a Deputy Chairman to act during the absence of the Vice-President. The powers, privileges and immunities of Parliament, its committees and its members will be laid down by Parliament, but until that is done they will be the same as those of the British House of Commons. Special mention may be made of the procedure to deal with money bills which is more or less the same as that followed in the British Parliament. It is thus clear that it is the House of the People which has supreme authority, and the Council of States can only revise or delay legislation but cannot altogether prevent it. The President is given powers to promulgate ordinances during the recess of Parliament which, of course, must be ratified by Parliament within a stated period.

The Constitution lays down that there shall be a Supreme Court of India. The provisions relating to the appointment of

judges, their salaries, their tenure of office and their removal are such as to ensure the independence of the judiciary. A judge of the Supreme Court cannot be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of each House and by a majority of not less than two-thirds of the members of each House present and voting has been presented to the President. The jurisdiction of the Supreme Court is to deal with questions relating to the interpretation of the Constitution. It has large appellate powers as the final court of appeal in the country in civil and criminal matters subject to limitations which are laid down. There will be an Attorney-General of India appointed by the President to give advice on legal matters and perform other duties of a legal character.

Another officer who holds an important position is the Comptroller and Auditor-General of India. He is also appointed by the President and can be removed from office only in the manner and on like grounds as a judge of the Supreme Court. He will be in charge of the accounts of the Union, as also of the States, and is really the watch-dog of the finances of the country.

Among the States there are those which correspond to the Provinces and those which were formerly Indian States. In each of the States corresponding to the former Provinces there will be a Governor who will be appointed by the President and will hold office for a period of five years. In him the executive power of the State will be vested; he will function as a constitutional Governor and be advised by a Council of Ministers, with the Chief Minister at its head. The Ministers will be collectively responsible to the Legislative Assembly. The powers and functions of the Legislature and the Executive are more or less the same as in the Centre except that each State has not necessarily a Second Chamber: provision is made to allow any State which has not a Second Chamber to have one, and to allow a State which has one to abolish it.

The number of members of the Legislative Assembly in any State may not exceed five hundred and may not be less

than sixty. They will be elected on the basis of adult franchise and each member will be returned by a constituency having a population of about 75,000. The Legislative Council will consist of members whose number will not exceed one-fourth of the total number of members in the Legislative Assembly or be less than forty in any case. They will be elected by various electoral colleges such as members of Municipalities, District Boards and other local authorities, persons who have been graduates of three years' standing of any University in India, persons who have been teachers for at least three years, and by members of the Legislative Assemblies of the States. There will also be a few nominated members, as in the case of the Council of States, to represent literature, science, and art, etc. The duration of the Legislative Assembly, as in the case of the House of the People, will be four years unless it is sooner dissolved. The Legislative Council, like the Council of States, will not be dissolved, but one-third of its members will vacate their seats every two years. The Governor has powers to promulgate ordinances during the recess of the Legislature.

Each State will have a High Court whose independence is secured in the same way as that of the Supreme Court and whose jurisdiction will extend to the State and to such other area or territory as may be laid down by Parliament.

The States corresponding to the previous Indian States have more or less the same Constitution as the former Provinces except that in their case the head of the State is not the Governor but the Rajpramukh.

There is a third class of States the administration of which will be carried on by the President through a Chief Commissioner or Lieutenant-Governor. The Parliament may create or continue for any such State a body, nominated or elected or partly nominated and partly elected, to function as a Legislature or a Council of Advisers or Ministers or both, with such powers and functions in each case as may be specified.

There are certain territories which are specified which shall be administered by the President acting through a Chief Commissioner or other authority. The President is authorized

to make regulations for them which shall have the force of law.

There are certain areas which are known as the scheduled and tribal areas which are inhabited principally by tribal people. Special provisions are laid down for the governance of such areas. The scheduled area in Assam is given a great deal of autonomy of administration to be carried on by Councils elected by the tribesmen from amongst themselves.

Provisions are laid down in detail about the distribution of revenues between the Union and the States, regarding the taxes to be levied and collected by the Union but assigned to the States or distributed between the Union and the States, and for grants-in-aid, etc. There will be a Finance Commission appointed by the President to make recommendations about these and similar matters. Privy purses of former Rulers of Indian States agreed to between them and the Government of India are guaranteed. The borrowing powers of the Government of India and the States are defined. Subject to restrictions which may be required in public interest, trade, commerce and intercourse throughout the territory of India shall be free.

There will be an independent Public Service Commission for the Union and for each of the States or groups of States, appointed by the President or the Governor or the Rajpramukh of a State as the case may be, to conduct examinations for the appointments to the services of the Union and the States respectively and to be consulted on all matters relating to methods and principles to be followed in making appointments, promotions, transfers, disciplinary matters, and in dealing with claims regarding pensions, etc. A member of a Public Service Commission may not be removed except by order of the President on the ground of misbehaviour after the Supreme Court has on inquiry reported that he ought to be removed, and he shall be ineligible after retirement for further employment under the Union or State Government. A person serving the Union or State Government holds office during the pleasure of the President or the Governor or the Rajpramukh as the case may be, but cannot be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed.

A special feature of the Constitution of India is that with a view to securing freedom of election it provides for the appointment by the President of an Election Commission consisting of a Chief Election Commissioner and other Election Commissioners for the superintendence, direction and control of the preparation of electoral rolls and for the conduct of all elections, including the appointment of election tribunals for the decision of doubts and disputes in connection with elections to the Legislatures. Separate electorates and reservation of seats for some communities, which were so prominently provided in the Act of 1935, have been abolished, except that for a limited period of ten years provision is made for reservation of seats in the Legislatures for scheduled castes and tribes in proportion to their population and for nomination of representatives of the Anglo-Indian community if they are not returned by election. The claims of the scheduled castes and tribes to services and posts shall be taken into consideration consistently with the maintenance of efficiency. There will be a special officer for the scheduled castes and tribes to investigate and report to the President all matters relating to the safeguards provided for them, and a Commission will be appointed after ten years to report on the administration of the scheduled areas and the welfare of the scheduled tribes. There will be another Commission to investigate the conditions of socially and educationally backward classes and to make recommendations for improving their condition and as to the grants that should be made for the purpose.

Fourteen languages which are spoken in different parts of the country are mentioned in Schedule VIII. A ticklish question which has led to much misunderstanding and bitterness in other countries regarding language has been solved by agreement of the members of the Constituent Assembly which had representatives of people speaking all these different languages. The Constitution provides that the official language of the Union shall be Hindi in Devanagari (or Sanskrit) script. To enable non-Hindi-speaking people to learn Hindi so that they may not suffer in comparison with those whose normal language is Hindi, and generally to provide

for a smooth transition without dislocation and causing deterioration in efficiency of administration, it is provided that English may continue to be used for fifteen years for all Union purposes for which it was used before the commencement of the Constitution. The President may, however, authorize the use of Hindi in addition to the English language. The official language of a State shall be the language or languages in use in the State or Hindi, as laid down by its Legislature. Until Parliament otherwise provides the proceedings in the Supreme Court and in High Courts and the authoritative texts of bills, etc., in Parliament as well as in State Legislatures shall be in the English language, and during the period of fifteen years a bill or amendment regarding languages may not be introduced without the previous sanction of the President. The President may not give such sanction except after he has taken into consideration the recommendations of a Commission consisting of members representing the different languages and the report of a joint committee of members of the two Houses of Parliament which will examine and report on the recommendations. The Union will promote the spread of the Hindi language and its development as a suitable medium of expression for all the elements of the composite culture of India.

The Constitution of India is thus a comprehensive document. Its preamble declares that the people of India have resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens Justice—social, economic and political—liberty of thought, expression, belief, faith and worship—equality of status and opportunity—and to promote among them Fraternity, assuring the dignity of the individual and the unity of the Nation. India accordingly has declared itself a Republic but has at the same time decided to continue as a member of the Commonwealth of Nations with the King as a symbol of their free association. Its success will depend on the good will and public spirit of the people of India and above all on the spirit of accommodation and compromise and the integrity and efficiency of those charged with working it.

THE BRITISH CONSTITUTION IN 1949

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THE Parliament Act of 1949 is not of comparable importance with the Parliament Act of 1911, for it introduces no new principle into the Constitution. It merely reduces from two years to one the period for which the House of Lords can delay non-financial legislation. Coming into force under the terms of the Parliament Act, 1911, after three successive rejections by the House of Lords, it had already been debated fully in both Houses and discussion of it in 1949 revealed nothing new. It belongs only formally therefore to a review of the British Constitution in 1949, but formally it requires first notice in such a review since it materially affects the relative powers of the two Houses of Parliament. Perhaps, however, future historians of British constitutional development may be more impressed by what it did not do than by the small change it actually instituted. In this it resembles the Parliament Act of 1911. It did not modify the composition of the Second Chamber although for forty years such reform has been recognized by Parliament itself, as well as by all the political parties, to be desirable. It retained the Upper House despite the fact that abolition has long been in the policy of the party which in the 1945-50 Parliament for the first time had the power to carry out its policy. This apparent change of mind in the Labour Party can no doubt be attributed to three facts: that the Lords did not prove as obstructive to the measures of the Attlee Government as they had been to those of the Campbell-Bannerman and Asquith Governments; that more radical changes would have caused what in the circumstances seemed, therefore, unnecessary controversy; and the recognition, new among Labour leaders, that the Lords' share in legislative work saves valuable time to the Commons.

The last year of the first post-war Parliament saw rather less legislation of constitutional importance than its earlier years. There was the Representation of the People Act which consolidated an electoral system that now provides for "one man, one vote", with certain new opportunities for postal and proxy voting, sets a severer limit on the use of motor-cars in elections and on election expenses—though eminent lawyers were later to disagree as to what precisely was covered by election expenses. The House of Commons (Redistribution of Seats) Act not only put into force the recommended rearrangement of constituencies which abolished two-member seats, equalized their size, and reduced the House to 625, but also established four permanent boundary commissions—for England, Scotland, Wales, and Northern Ireland—under the chairmanship of the Speaker, to effect further redistributions periodically. As a measure of economy the Electoral Registers Act abolished the autumn register. Thus the finishing touches were put to the statutory provisions for the General Election of February 23rd, 1950.

In the field of legal administration, apart from a Law Reform (Miscellaneous Provisions) Act and the Legal Aid and Advice Act, there were two statutes of some importance. The Justices of the Peace Act, giving effect to the recommendations of the departmental Roche Committee of 1944 and the du Parcq Commission of 1948, provided for an age limit of seventy-five for J.P.'s and for the abolition of benches in small boroughs, but left the question of combining office in local government councils and on the bench to be dealt with when local government is reformed. The Juries Act brought special juries to an end and made certain provisions for payment of jurors.

New laws relating to administrative bodies were the Civil Aviation Act and the Air Corporations Act, both comprehensive consolidating measures. The Air Corporation Amalgamation Act merged the British South American Airways Corporation with the British Overseas Airways Corporation, and enabled an additional deputy-chairman of the latter to be appointed without altering its membership of a

minimum of five and a maximum of eleven. The Local Government Boundary Commission Act brought to an end the existence of that body which had been created by the Coalition Government, on the ground that it had itself come to the conclusion that solution of the boundary problem in local government was impossible without a fresh allocation of functions among authorities. The Government had decided, therefore, that this problem must await general local government reform, or, in the Opposition's words, the Government had shelved it.

Rumours of the acceptance of bribes in high places in return for favourable treatment in such matters as the granting of priorities and licences had led to the appointment in October, 1948, of the Lynskey Tribunal. The report of this body in January, 1949, criticized the actions of a junior minister, Mr. Belcher, and of a director of the Bank of England, Mr. Gibson, both of whom subsequently resigned, the former from Parliament as well as from his ministerial post. But the Tribunal completely exonerated all the other M.P.s and civil servants whose names had been irresponsibly bandied about as a result of the activities of a contact agent known, among other designations, as Mr. Stanley. It found that no money payments had passed, but that there had been the acceptance of hospitality and small gifts by Mr. Belcher and a suit of clothes by Mr. Gibson. As a result the Government set up an enquiry into the activities of contact agents in relation to departments. On the whole, it may be remarked that the investigation vindicated to a degree sometimes admired abroad the standards of British administration.

Developments in British relations with countries overseas usually do not come within the scope of a review of the British Constitution unless these belong to the Commonwealth. But mention should perhaps be made of the creation in 1949 of the Council of Europe, not so much because this constitutes yet another inter-governmental organ, but because its assembly has a membership drawn from the Parliaments of its constituent countries, selected—in the case of the United Kingdom by the Government—to represent parliamentary opinion.

Although there has been some loose talk of this as a step towards European confederation, it is of course a consultative body only to which there has been no transfer of sovereignty.

The Commonwealth, however, has seen some legal changes of constitutional significance. The meeting of Commonwealth Prime Ministers made an agreed statement on the important constitutional issues arising from India's wish to become a republic and at the same time to continue her membership of the Commonwealth. Nothing could better illustrate the extreme adaptability of British constitutional forms than the fact that there was by the whole Commonwealth an "acceptance of the King as the symbol of the free association of its independent member nations and as such the Head of the Commonwealth". "Accordingly the United Kingdom, Canada, Australia, New Zealand, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress."

The jurisdiction of the Judicial Committee of the Privy Council in regard to India was also brought to an end. It terminated to the accompaniment of valedictory addresses in which the highest compliment was paid to the quality of its historic services in India.

In the field of legislation there was the India (Consequential Provisions) Act to avoid certain difficulties consequent upon India's becoming a republic on January 26th, 1950. The Ireland Act, 1949, provides that the Republic of Ireland, though not a dominion or a member of the Commonwealth, should have some of the advantages which accrue to a member and should not be a foreign country. The British North America Act, 1949, confirms the agreement by which Newfoundland joined the Canadian federation. The British North America (Amendment) Act transfers to the Canadian Parliament, at its request, the legislative authority of the Imperial Parliament, except for (a) what is within the exclusive jurisdiction of the provincial legislatures, (b) the limit of five years on the life of a peace-time Parliament, (c) the use of

French and English in schools. There was also the Colonial Naval Defence Act which enables Colonies jointly to raise naval forces for their defence. Finally, the Coussey Report on the Gold Coast may be mentioned. This report was prepared by an all-African committee set up to examine proposals for constitutional reform. The committee recommended the creation of a Legislative Assembly consisting almost entirely of elected members, and an Executive Council the majority of whose members would be drawn from the Legislative Assembly. Its recommendations were accepted in principle by the Government, which said that since it would be some time before they could be implemented this would give ample opportunity for their later discussion—a remark which may be repeated here. At least as illustrating the gradual way in which Commonwealth constitutional evolution takes place, and yet does so according to a recognizable pattern, this deserves note.

But it is often in the course of doing its non-legislative work that Parliament acts in ways of most constitutional moment. The withdrawal of its confidence from a Government or a Minister is a case in point. And it is in this non-legislative field that one of the most interesting developments of 1949 occurred, one clearly destined to be more frequently repeated. This was the temporary transformation of the House of Commons into what some Members called a shareholders' meeting, when it was called upon to "take note of" the first annual reports of certain public boards. Indeed, the distinctive characteristic of the work of the first post-war Parliament was here bearing its fruit. No doubt can be entertained that this fruit has a new constitutional flavour. A Parliament which was marked out from its predecessors by the creation of many public corporations began to become somewhat uneasily aware of the problems of its own responsibility in connection with their subsequent activities. The Bank of England, the National Coal Board, the British Transport Commission, the Electricity Authority, the Airways Corporations, the Gas Boards, the Overseas Food Corporation, and many other bodies are charged with administering State-owned assets with some kind of accountability to Parliament. Such account-

ability means a corresponding obligation of Parliament to supervise—or is it only to take note of?—their operations.

Obviously several important questions are raised by this development, and the fact that the first debates on annual reports of such bodies have now taken place gives them more concrete expression. What are the respective spheres of competence and responsibility of the Board and its officials, of the Minister and his Department, and of Parliament? How far is the procedure of Parliament adapted to the efficient discharge of its duties of supervising the management of public enterprise? On neither point can it be said that any final, or in some ways any clear, answer has yet been given.

The problem can best be examined by taking first the theoretical delimitation of responsibilities; secondly, by considering how in fact Parliament has behaved; thirdly, by glancing at parliamentary procedure.

The guiding principle of combining tactical autonomy with strategic control was described most fully by the Minister of Fuel and Power when introducing the first debate on the annual report of the National Coal Board. In this he did not differ, except perhaps in emphasis, from the authoritative definition given earlier in the life of this Parliament by the Lord President, Mr. Morrison, but he looked somewhat more fully at its consequences, and some of his explanation is worth quoting.

There is certainly to be discerned in Mr. Gaitskell's remarks evidence of the movement which has taken place away from that extreme view which once saw in the Minister an unwelcome and unauthorized intruder, whom it was the duty of all to prevent from "interfering" with independent and "non-political" public boards in their single-minded search for efficiency in the national interest. In this respect it is scarcely too early to suggest that constitutional history is running true to type; for rarely, except in the judicial field, have Parliament and Ministers been willing for long to abstain from exercising control over their administrative creations. Mr. Gaitskell himself defined the two opposing views and implicitly recognized this trend.

"Opinions differ about just how much power the

Minister and, therefore, Parliament should have over these boards. There are differences of opinion which I think do not particularly follow party lines here. The argument, of course, for limiting the powers is based primarily upon efficiency. Many take the view that if the Minister interferes too much with the Board the Board will not be able to conduct its business so efficiently. It is emphasized that these boards are trading concerns, that their activities are for that reason particularly unsuitable for ministerial and Parliamentary control. . . .

"On the other hand, there are those who . . . attach less importance to the freedom of the boards from interference on grounds of efficiency, and more importance to the rights of Parliament to exercise control over State enterprises. No doubt, a good case can be made out for both points of view, but it certainly is not possible to hold them both at the same time. One cannot object to powers being given to the Minister and at the same time require him to accept responsibility.

"The nationalization Acts which have been passed during the present Parliament do not, in fact, follow either of the extreme points of view which I have just mentioned. They limit the Minister's powers pretty severely, though not so severely as they were limited in the case of the pre-war corporations and not so severely as some would like them to be. The conception embodied in these Acts is that the industry concerned should be managed by public boards in the public interest, in accordance with certain principles and directives laid down by Parliament in the relevant Acts. It is for the nationalized boards to comply with these statutory duties and obligations."

But it must at once be added that everything in the debates here considered suggests the closest identification of the Minister with the board. "I must make it clear that I have complete confidence in the Board's judgment on these matters", says the Minister. And this sentiment is repeated by one minister after another in relation to his own particular board throughout these debates. It would hardly be likely that he

would speak otherwise, since he is in every case responsible for appointing the members of the board and can usually remove them.

"The general powers of the Minister," says Mr. Gaitskell, "are really embodied, first of all, in his powers of general direction, and secondly, of course, in the fact that he appoints the Board. If the Board in the exercise of their statutory functions were to proceed on lines which the Minister thought were contrary to the national interest, he could give them directions of a general character. Thus the Minister must accept responsibility for the general lines on which the Board are carrying out their functions. He must accept responsibility for what I should describe as the general success or failure of the enterprise. But he is not responsible for the day-to-day management and administration of the industry by the Board or the operations of the Board in the production and selling of coal or the management of ancillary activities."

There are certainly variations in the emphasis laid by different Ministers on the measure of their responsibility. Despite the last words quoted of Mr. Gaitskell, he appeared to take responsibility for everything done by his board including, to instance a specific point, the selling-price of coal to Denmark. Here the Minister pointed out that "under the Act the Minister has no specific powers of price control whatever". But the Board was freed in regard to exports by "a deliberate decision of the Government", he went on to explain, from a pre-nationalization agreement not to increase prices without permission. And now, he thought, "we should be making a great mistake if we were to intervene." Thus the specific power was not there but—by implication—it, or something very much like it, could be used were it not that the Minister approved the price policy of the Board.

On the other hand, Mr. Barnes stressed more particularly his divorce as Minister from the operations of the British Transport Commission. While Mr. Strachey, during the debate on the Overseas Food Corporation, seemed also to take full responsibility for everything done by that body, and so to

lay the same emphasis as Mr. Gaitskell, Mr. Creech Jones, when closing that debate, was at pains to insist: "I would say most emphatically that, regarding the operation of the scheme, there has been no political interference of any kind and no pressure either by my right hon. friend the Minister of Food or anyone else in the Government on the Corporation in regard to its target and time-table." There emerges pretty clearly from these debates the conclusion that whatever may be the statutory provisions for confining the Minister's responsibility and powers of "interference", however much or little he may have refused or been absolved from the necessity to answer for the Board's actions, he does in fact behave as the champion of his Board and the defender of its every move. Indeed, he then appears in relation to it in a role practically indistinguishable from that of, say, the Postmaster-General in relation to his department. If he is in practice to appear thus as the Board's champion, it is difficult to see how the principle of his limited responsibility can fail to become a myth disguising administrative reality. In such confusion there is danger. Some anxiety has been expressed on this point. Mr. Peter Thorneycroft, for the Conservative Party, spoke of "frustrated Members of Parliament who never get their Questions past the Chair." In the debate on the British Transport Commission's report he went on, "I find it rather a sad thing that the Ministry which I once had the honour to serve is for 364 days of the year a barrier to any sort of information at all, and then, on the 365th day, in a few rather quick speeches—some rather long, but very few speeches altogether—we try to lift this curtain to see what is going on. I think we will have to consider some other way of tackling this subject."

It would seem that the issue of principle involved is whether, as Mr. Gaitskell implied, the responsibility of the Minister and of Parliament are co-extensive. For it must always be remembered that as the general watch-dog and representative of the nation Parliament is concerned with the whole conduct of any nationalized enterprise. But so, it may be argued, is the Minister. At least in present circumstances of recent nationalization and of economic readjustment the efficiency and

achievement of such key undertakings is of the first concern to the Government and reflects directly on its policy. The pre-war aim to emancipate the Minister from accountability for details (or tactics) is bound in these conditions to seem unreal, for it is from such specific examples that the evidence of relative achievement and efficiency is supplied. A Government closely identified with a policy of nationalization is unlikely to admit that Parliament can have any wider concern with the working of a public enterprise than itself. A Government with a contrasting policy might identify itself less readily with a board's every action. It might conceivably be more willing to see the House devising machinery for scrutiny of a board's activities going beyond the area of the Minister's responsibility.

Before considering parliamentary procedure in this respect it would be well to glance at the manner in which Parliament has in fact behaved in its dealings with these matters, for that may make clearer what parliamentary organization must be designed to do.

Much has been said in debate about the machinery of the boards. Of this, if it can be asserted with, for instance, Mr. Gaitskell, that "there is too much vague generalization, quite unsupported by evidence", it must be added that the opportunity to obtain that evidence—by direct contact with the administration of the boards, by other enquiry, or by something else than vague generalization on the ministerial side—is not readily available to M.P.s. There was also patent in Mr. Gaitskell's fulsome defence of the Coal Board's machinery a tendency to accept an out-of-date rule-of-thumb administrative method in preference to any recognition that there is such a thing as a science of public administration, a science which is nevertheless now increasingly acknowledged and utilized in other branches of the public service, in such a direction as that of the Organization and Methods Divisions of the Treasury and other departments of State. "I am sure", he said, "that most of us understand that whether organization works well or not depends far more on personalities and personal relationships than anything else."

Still in the realm of machinery, there has been criticism

of the size of boards, coupled with suggestion of duplication with ministries—for instance, by Mr. Wilfrid Roberts on the Overseas Food Corporation; lack of autonomy or over-centralization—especially in coal and transport; of the “line and staff system” and the failure to make the worker feel himself a significant part of the organization—by Mr. Edelman on the Coal Board. Other examples could be given, but enough has been said to underline the interest shewn by the House in matters of administrative machinery, and perhaps also to suggest that that interest is needed.

Parliamentary behaviour in relation to the staffs of public boards has already caused some heartsearchings. There are likely to be more. For personal eulogy and attack have been one of the least satisfactory aspects of this constitutional development. The Minister naturally pays tribute to the character, the skill, the integrity, etc. of the persons he or his predecessor has appointed to the board. The Opposition perhaps equally naturally is apt to assail these persons. There is no rule of procedure to prevent such attacks at least on the competence and policy of such persons, although they cannot themselves reply. If a member of a board is dismissed, the roles of Minister and Opposition are reversed, and the latter appear as the sponsors of an aggrieved official. This may lead to the kind of remark made in one debate: “It is not usually considered quite right for people who lose their appointments to go squealing to the Opposition to get their case put forward in this House.” What are the rights in this matter? When disagreement develops on a board, are the minority members of the board justified in going to Opposition M.P.s to get the notice or publicity for their views denied them by the Chairman or majority? Is such action proper when taken after the dismissal or resignation of members from the board? Is it perhaps even acceptable while they are still on the board? In neither case is the practice compatible with the idea of “no political interference” in the affairs of “a strictly commercial enterprise”, and its insulation from the kind of parliamentary sniping which is deemed to be the chief justification for preferring a public corporation to a department of State for

running such public business. Nor is it consistent with Civil Service standards of professional conduct. The result might prove to be that the nation has the worst of both worlds—neither the absence of political interference designed for party ends, nor effective responsibility to the public organized through the Minister's departmental responsibility and the right of Parliament to ask Questions.

Reference has already been made to the sense of frustration alleged by some M.P.s at restrictions imposed upon their right to question Ministers. Mr. Barnes made it clear that he at least vastly preferred the present system, under which that was so, to what preceded it, where, he said, "the type of question directed to the Minister concerned itself more and more with details of management with which the Minister was not competent to deal." He regarded the annual report as a superior substitute, giving "Members all the information upon which they can form a proper judgment as to whether the Minister and the British Transport Commission have discharged the responsibility Parliament has placed upon them." Much better, he obviously thought, was the prevailing position where the one-time Permanent Secretary of the Ministry of Transport now transformed into the Chairman of the Commission could, and did actually, apply the ability he once shewed in framing the Minister's replies to Questions in the practice he had adopted of personally answering all letters from M.P.s "He has all the necessary experience to deal with hon. Members. . . . I think that is a very good thing, and I have heard and have received very few complaints from hon. Members with regard to that procedure." But Mr. Barnes's remarks raise as many issues as they settle. If the head of a board has to answer M.P.s personally where is all the alleged saving of office work and officials' time? If this be the implied virtue of the new system, must there always be a Chairman with that same departmental experience, and if not what becomes of the virtue?

On the actual procedure adopted by the House much has been said, and no doubt much more will be said. Is there to be "a claim for enquiry whenever anything goes wrong" as

made by the Opposition and resisted by the Government in relation to the groundnuts scheme? What of the suggestion that in debating such annual reports the House of Commons should regard itself as a shareholders' meeting? Both in the Government's decision as to the form of its resolution, "the House takes note of the annual report", and in the commendatory quotation of this term by the Minister of Fuel and Power there is evidence of a hope that party division would not be stressed in the debates. But perhaps at this early stage it is inevitable that the issue for and against nationalization should defeat the realization of this hope, no less from Government than from Opposition speeches.

Two further procedural points emerge from the debates. The first is the claim that the parliamentary time given to the debate is wholly inadequate—of course a not unusual criticism in regard to any debate. Six hours each were given to the British Transport Commission, the National Coal Board and the Overseas Food Corporation, of which time nearly half was taken by the Government and Opposition front bench spokesman. The second point can best be summed up in Mr. Peter Thorneycroft's words, opening his summary of the Opposition case in the transport debate: "This is a vast subject, ranging from hotels to air charter companies, from the bulk carriage of goods on the railways to the details of local haulage. What is wanted is not a sort of Second Reading Debate as we have had to-day, but a searching analysis of what, if anything, is really going on behind the iron curtain of the Ministry of Transport." Such an aim could, of course, only be met by the use of parliamentary committees, for the time available in the House of Commons time-table does not even permit of an annual six-hours debate on each and every one of the public boards now existing, and it may be felt that 1949 brought the prospect of that constitutional development appreciably nearer. But it certainly witnessed Parliament emerging in a new but as yet ill-defined character—as a shareholders' meeting.

PARLIAMENT AT SEA

by W. L. BURN

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THE Crimean War was not considered to have enhanced the reputation of the Royal Navy. George Borrow grumbled about "Scotch admirals"; *Punch* posed the conundrum, "What is the difference between the Fleet in the Baltic and the Fleet in the Black Sea?", and answered, "The Fleet in the Baltic was expected to do everything and it did nothing: the Fleet in the Black Sea was expected to do nothing and it did it." In March, 1856, the House of Commons had been treated to a violently acrimonious debate between Sir Charles Napier, who had commanded in the Baltic, and Sir James Graham who at that time had been First Lord of the Admiralty. However, the Treaty of Paris was concluded on the 30th March and it was deemed proper to celebrate that event by a naval review at Spithead on St. George's Day, 23rd April, 1856. The review, as a spectacle, was a success. Ships were dressed at 8 a.m. At noon the Queen, in the royal yacht, steamed through the double line of warships. Between 2 and 3 o'clock the four squadrons of steam gunboats ("a novel feature", as the *Annual Register* put it) did the same. At 3 p.m. there was a tactical exercise and at 4 p.m. the gunboats bombarded Southsea Castle as satisfactorily as a limit of six rounds per ship would allow. At night the fleet was illuminated by blue lights. It was estimated that the spectacle had been witnessed by 100,000 spectators, and the notice of it in the sixth volume of Laird Clowes' *The Royal Navy* ends with this passage:

"The Peers were in the *Transit*, screw, Commander Charles Richardson Johnson; the Commons in the *Perseverance*, 2, screw, Commander John Wallace Douglas McDonald."

Seldom have twenty-three words more effectively concealed what happened.

On the 18th April the Commons began to show an interest, though a somewhat critical one, in the forthcoming celebrations. Why, asked Colonel French, were the peers to be allowed to take their wives with them, a privilege denied to the members of the lower House? Mr. W. S. Lindsay, who had gone to sea as a coal-trimmer at fifteen and had been successively a ship's captain, a coal-fitter at West Hartlepool, a shipbroker and a shipowner, wondered why the review should be held at all. Why had this immense flotilla not been prepared long since, when it might have been of service in the war? And was it not a fact that the *Perseverance* was the same ship that had capsized? The First Lord of the Admiralty, Sir Charles Wood (afterwards the first Lord Halifax), had an answer to everything. This was not surprising for, beginning with the incontestable advantage of marriage to a daughter of Earl Grey, he had held one office or another in the various Whig administrations since 1830 and was to remain in political life nearly twenty years longer: a clever, confident, experienced politician of the second or third rank. The peers, he said, of whom there were not many, could be accompanied by the peeresses, but there was no room for the wives or families of the 658 members of the House of Commons. It was true that the *Perseverance* had once "met with an accident" but since that time she had shown her seaworthiness by making six voyages across the Bay of Biscay. The purpose of the review was to show what means we should have had of carrying on the war if that had been necessary. The members of the two Houses would leave Waterloo by train at 7 a.m. on the 23rd; tenders would be in waiting at Southampton to take them to their respective ships; refreshments would be provided by the Admiralty; the return train would leave Southampton at 6 p.m.

These arrangements, modified slightly at a later stage, had been made with care by the Admiralty. The managing director of the South-Western Railway had promised that "Train No. 3" should leave Waterloo at 7 a.m., arrive in Southampton about 9.15 a.m. and return for London about

6.30 p.m. The Mayor of Southampton was requested to keep clear the passage between the railway station and the dock. Captain McDougal had five tenders for carrying his distinguished passengers to their ships. It was expected that they would be on board by 10.30 a.m., would wait for the royal yacht and would then follow it through the line of warships; an honour to which Sir Charles attached special importance. Breakfast and a cold lunch, with "sherry, beer and soda-water", were to be provided.

Thus beguiled, some 400 peers, an unknown number of peeresses and 450 members of the Commons duly arrived at Waterloo on the 23rd April and took their places in a train (actually No. 10 and not No. 3) which started punctually at 7 a.m. This must have seemed particularly gratifying to at least one M.P. who had seen 1,000 passengers queueing for tickets on the previous day. From this moment, however, the luck turned. Train No. 3, an excursion train carrying 670 passengers, had left Waterloo at 5.30. At Esher a feed-pipe burst and although the train managed to crawl to Woking it could get no further. Woking, unfortunately, was not connected by telegraph with Esher and it was therefore a considerable time before an engine could be sent from Kingston to shunt the luckless excursion train into a siding and allow its successors to pass. A further complication was apparently added by an ordinary train which was perseveringly making its way up to London from Southampton. It was not until about 11.30 a.m. that Train No. 10 reached Southampton.

There Captain McDougal had been waiting with his five tenders, quite unaware of the breakdown on the line, for the best of reasons—that no one had thought fit to telegraph the information to him. In the meantime another train had arrived, filled with passengers for the *Himalaya*, who demanded that they be taken out to their ship. Captain McDougal for some time refused but eventually, faced by a crowd of "angry gentlemen and ladies" and unaware that Train No. 10 was now only three-quarters of an hour away, he yielded and placed four of his tenders at their service. Consequently, when the belated legislators (somewhat hungry, one suspects, by this

time) had made their way from the station to the docks there was only one vessel, the *Harbinger*, waiting for them. The task of embarking about 1,000 passengers, carrying them out to the *Transit* and the *Perseverance* and embarking them in those vessels took another hour. It was nearer 1 o'clock than 12 before the parliamentarians finally got under way for Spithead and it will be recalled that the *pièce de resistance* of the review, the passage of the royal yacht between lines of warships, had begun at noon.

The members of the Commons, in the *Perseverance*, beyond missing most of what they had been invited to see and finding the lunch provided for them disappointing, had henceforth not much to complain of. At least they caught their return train about 6.30 p.m. and arrived back in London at a reasonable hour. It was far otherwise with their Lordships in the *Transit*.

That unfortunate vessel had needed help from the first and although the spectacle of two judges helping to man the capstan must have been stimulating it did not augur too well for the future. The *Perseverance* forged ahead and the *Transit* made up to the fleet barely in time to witness the tactical exercise at 3 p.m. Then her engines stopped and she lay, as Lord Ravensworth said next day, like a log upon the water. The gun-boats bombarded the castle; the review ended; presently the blue lights illuminated the fleet; but still the *Transit* lay on the water or moved back slowly, with frequent stoppages, to Southampton. Lord Granville, leader of the House of Lords and therefore the representative of the Ministry on board, had been told by his exasperated fellow-peers to go below and stoke the fires himself. It was 10 p.m. before the *Transit*, having collided with a gun-boat on the way, saw her passengers safely landed. Then ensued an uneasy spectacle, with peers, bishops, bishop's wives, scrambling helter-skelter for the station. But Train No. 10 had gone hours ago. It was not until 11 p.m. that an ordinary train could be made up and started, and not until 3.30 a.m. on the 24th that it arrived at Waterloo, leaving their Lordships with the task of finding cabs in the small hours of an April morning.

That afternoon the storm broke, for it is to be remembered that the country as a whole, with the memories of the Crimean Winter fresh in its mind, was extremely sensitive to official mismanagement. It was very little use for Lord Granville to tell the Lords what a large, fine ship the *Transit* was. They knew much more about it than he did, for, summing up the situation about 3.30 p.m., he had hailed a small boat and got himself and a few friends put ashore on the Isle of Wight. Lord Campbell, the Chief Justice, arriving home at 4 a.m., had put in a full day in Court before going down to tell the Lords that there had been "such gross mismanagement somewhere as to give one a clear idea of what happened at Balaklava". In the Commons the first word fell to Mr. Stafford, a Conservative M.P. who had held minor office at the Admiralty under Lord Derby in 1852 and had been convicted by a Select Committee of grave misconduct. After that he had gone out to Constantinople where he did excellent work for the sick and wounded—"a very wise and benevolent way of re-establishing his reputation", as Granville put it—and had formed strong views about war as conducted by Whigs. He begged to congratulate the Government on their arrangements for the previous day: he had now seen their system at work at home and abroad; they had done as much as possible to make Southampton resemble Balaklava. Ought there not to be a special illumination dedicated to the safe return of those Members of Parliament who had entrusted their persons to the awkward keeping of Her Majesty's Government? Lord William Powlett followed, with the more effect because, being in Southampton early on the 23rd, he had been honoured by an invitation to join the *Transit*. The Marquis of Granby was another of those who mentioned Balaklava. When there had been such confusion at Southampton, only 78 miles from London, how could anyone be astonished at what happened in a harbour 3,000 miles away? Unfortunately, the arch-villain was absent. The duties of the First Lord, Lord Palmerston explained, still detained him at Portsmouth ("Laughter").

On the next day, however, Sir Charles was in his place to stand fire. Was he aware, Mr. Lindsay asked, that the *Transit*

was the same vessel which had broken down three times before? Sir Charles then embarked upon his defence. He pointed out that the initial blame lay with the railway company which had brought its passengers to Southampton two hours late; he excused the action of Captain McDougal in parting with four of his five tenders; he described in detail the careful arrangements which the Admiralty had made for the comfort of its guests. As for the *Transit*, there was nothing at all wrong with her machinery or anything else. Her commander was "covered with medals" and she had stopped for the simplest, though perhaps the least excusable of reasons—her fires had been allowed to go out. That was no fault of the Government which could hardly be expected to remind the engineers, "Don't let your fires go out".

Sir Charles certainly succeeded in diverting some of the wrath from his shoulders to those of the South-Western Railway, for when Mr. Chaplin, as a director, had to undertake a defence, county gentlemen such as Sir William Jolliffe and the ultra-Protestant Mr. Newdegate turned on the railway company and denounced what Sir William called its "inefficient monopoly". Mr. Henley, M.P. for Oxfordshire and one of the shrewdest men in the House, pointed out, however, that as ordinary trains on ordinary days took 2 hours 20 minutes to go from London to Southampton it was ridiculous to expect crowded trains, on a crowded day, to make the journey in five minutes less. He could not understand how Sir Charles Wood had allowed himself to be gulled, "even by railway directors", with such a belief. Finally, Sidney Herbert somewhat acidly remarked that the Government ought never to have undertaken to make the arrangements for members who were not, after all, obliged to go and, if they wanted to go, ought to have been left to make their own arrangements. The House, he concluded, had very different functions to discharge.

That was all; but it is almost safe to speculate that one class of ladies heard of the misfortunes of the peers and still more, of the peeresses, with equanimity; that is, the wives of members of the Commons who had been refused tickets.

PARLIAMENTARY CONTROL OF THE PUBLIC ACCOUNTS—II

by BASIL CHUBB

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WHEN the Exchequer and Audit Department has completed its audit and examination of the public accounts and the Comptroller and Auditor General has certified them and written his reports, accounts and reports are presented to the House of Commons, which refers them to its Select Committee of Public Accounts. This Committee is the last stage of the audit control.

The exact functions and aims of the Public Accounts Committee are nowhere defined by the House. Standing Order No. 90 says that there shall be a committee "for the examination of the accounts showing the appropriation of the sums granted by parliament to meet the public expenditure and of such other accounts laid before parliament as the committee may think fit". But nearly ninety years' experience and development have given members a fairly clear idea of what are the possibilities and limitations of such a Committee. The sum of this experience was epitomized by a former Chairman of the Committee, the Rt. Hon. Osbert Peake, when he defined its functions as, first, to ensure that money is spent as Parliament intended; second, to ensure the exercise of due economy; and, third, to maintain high standards of public morality in all financial matters.¹

To ensure that money is spent as Parliament intended is clearly the primary function of the Committee. It is the job which it was originally set up to do by Gladstone. It includes, first, a final check on the veracity of the accounts and continuous attention to their form and to the principles of accounting; second, a check on appropriation, for the

¹ *Public Administration*, vol. XXVI, No. 2 (Summer, 1948), p. 80.

Committee exists to assure the House that public money goes in the correct amounts to the destinations that Parliament intended. In the pursuit of this aim the Committee compares estimates and accounts and hears the reasons for discrepancies. Finally, it includes a check on regularity. The Committee aims to ensure that money is spent according to the rules and practices laid down by Parliament, the Committee itself, the Treasury, and the departments. These are by no means formal duties, for the best known and basic rules of public finance are infringed from time to time even today.¹

The exercise of due economy, though nowhere officially stated or defined, has come to be a well established aim, and the Committee has tended gradually to increase its scope in this field. It involves examination of cases of waste and investigation of departmental machinery, methods and action. It includes, also, the examination of contracts and the consideration of the relations between government and the business concerns with which it deals. It is work of the greatest importance and yet it must be a subsidiary function. The Committee is directed to examine the accounts and is geared to an accounting and audit system designed primarily to ensure regularity and only incidentally to test efficiency. In any case, time difficulties preclude such enquiries on a large scale.

The third aim laid down by the Rt. Hon. Osbert Peake is less easily explained. The Committee acts as a referee between the House and the departments and between government and industry and it censures doubtful financial practices. In the future its members may develop rather into Tribunes of the Plebs, watchdogs for the public and the business community against the methods of the ubiquitous state.

The Committee is appointed annually at the beginning of the parliamentary session, generally in November or December. Its fifteen members are nominated by their parties and are chosen, in the normal fashion, in proportion to voting strength in the House. Their Chairman, on whom, as we shall see,

¹ See, e.g. the third Report of the Public Accounts Committee for 1946/47, H.C. 139 (1946/47), paras. 25-29 and 105.

falls most of the work, is, by convention, a senior Opposition member, often an ex-junior minister and destined perhaps for high office, and he is sometimes an experienced Accounts Committee member. He may or may not be an ex-Financial Secretary to the Treasury, for practice has varied here. Many Chairmen in the past have been connected with banking or business and not a few have had distinguished records as financial experts or as advocates of economy.

It is not easy to judge the calibre and qualifications of the other members. Previous knowledge is difficult to establish and the past records of members and their professions do not necessarily indicate an aptitude for this work. In general the Committee has been composed of senior members of the House. But though this was a most marked feature until recently, the impression to be gained from examination of more recent Committees is that seniority does not count for so much today and that the Committee is less distinguished than it was.

But it is in the Committee itself and there only that members can learn their jobs. They are usually re-elected if available, and the records of some are truly remarkable. Sir Assheton Pownall sat for twenty-three years and it cannot be denied that when he was Chairman, in his last three years, he knew all that experience, at least, could teach him. Since 1900, about 57 per cent. of the members have served for more than two years and therefore had a chance to become useful. Also, since the number of new entries each year is low, the Committee always has a large core of experienced members. But as against this it is clear that, whereas those who served in the nineteenth century showed a keen interest in the work and a vast knowledge of formal points of accounting, today most members have but little time available to study the much greater range of problems with which the Committee deals.

A true picture of the Committee is not possible, however, unless its procedure and techniques are examined. Through the years the volume of work has increased enormously with the rise in expenditure, and members must now meet about twenty-five to thirty afternoons in a session. A preliminary meeting is held in November or December to decide the year's

programme, but work does not start until the end of February when the first of the Auditor General's reports become available. From then until Easter, it meets once a week, thereafter, when more material is available, twice a week until July. This pattern is rather rigid and, without altering the procedure seriously, it is difficult to avoid the conclusion that the limit has been reached. This is a matter of some importance in view of increasing pressure of work.

An examination of attendance records shows that the Committee in session does not consist of anything like fifteen members at all. In the first place, since 1922, the only official member, the Financial Secretary to the Treasury, who is appointed *ex officio*, has only attended odd meetings. Again, normally, only seven or eight attend each meeting and even to attend does not mean that members are there all or even most of the time. To be recorded as present it is only necessary to appear in the Committee room for a moment or two. In practice members come and go freely, and breaks of a few minutes for want of a quorum (five) are not uncommon. Finally, the records show that, as in most committees, it is customary for the Chairman and some one or two colleagues (often the most useful) to attend very regularly, while many attend half or less of the meetings.

The picture must be still further modified in view of the actual procedure in the Committee. It proceeds by way of interrogation of witnesses in the normal fashion. It has powers to call any person whom it considers can aid its deliberations but, in fact, it depends almost wholly upon the Auditor General, the Treasury representatives and the Accounting Officers (usually the permanent heads) of departments, with whatever experts the last named care to bring with them.

The Comptroller and Auditor General and the Treasury officers have gradually been accorded a special status and, though attending technically as witnesses, they are in practice much more than that. The Auditor General is naturally the key man. He is, in truth, the "acting hand" of the Committee. His reports are the basis of its investigations and, although they are necessarily brief, a whole year's work of his entire

department is available to the Committee. He attends every meeting at which evidence is taken and, nowadays, many of the deliberative meetings too.¹ He aids members by turning up papers and furnishing information quickly. Behind the scenes his influence is very great indeed. On the mornings of Committee meetings he confers with the Chairman for an hour or two and they run through the business of the afternoon.² The Auditor-General advises the Chairman³ and suggests lines of enquiry and possible questions. It is also said that he indicates the answers the Chairman might reasonably expect to receive. Thus an amateur Chairman can ask not only the questions which the experienced committee-man might put but he can also act as an expert interrogator.

The permanent Treasury witnesses, the two Treasury Officers of Accounts, also have a special though less important part to play. They have a particular responsibility for the form and technical details of the accounts and they also act as Treasury representatives and give that department's views and comments.

Before this tribunal, consisting of the Chairman and some half dozen members, together with the Clerk of the Committee, the Auditor-General and his secretary and the two Treasury officers, come the permanent heads of departments one by one, in their capacity of Accounting Officers. They explain their departments' mistakes and they justify their decisions. Overworked as they all are, they cannot keep a direct hold on all financial affairs and if required to attend the Committee they must and do learn a brief. And not only do they come briefed, but they are often accompanied by subordinate heads of branches, for the Committee's questions sometimes range widely. In addition, subordinate officers sit behind their chiefs in the Committee room, ready to help them out and, according to Mr. Glenvil Hall, they "arrive with masses of files in case anything has to be turned up at a moment's notice."⁴ The

¹ See H.C. 189-1 (1945/46), Evidence, Q. 4582.

² *Ibid.*, Evidence, Q. 3929.

³ *Ibid.*, Evidence, Q. 4299.

⁴ *Ibid.*, Evidence, Q. 3369.

evidence of the Accounting Officers and their colleagues is often supplemented by written memoranda, furnished on request. Only rarely do ministers and unofficial witnesses attend.

It has been pointed out that the Chairman comes well prepared and it is, therefore, not surprising that the interrogation of witnesses is carried out mainly by him alone. This is pre-eminently a gathering of experts and the majority of members play a small part in the proceedings. At most, one or two of them add anything useful and now that the Committee works against time, the Chairman tries to hurry them along to the next business. Hence, most members appear rather in the role of jurors, who will come later to some conclusions on the matters at issue.

Finally, it is important to notice that party and politics rarely creep in. The atmosphere in the Committee is judicial rather than political.

In this fashion the accounts are examined competently and at speed. By July the Committee has, thanks to the Auditor General's sieve, passed in review all the accounts presented to Parliament and it remains only to report.

The form and arrangement of reports have changed but little since the early days. A first report is issued in March if and when an excess vote is requested by a department. Occasionally reports on specific subjects are issued in the course of the session in order to attract the attention of the House. The main report of the year, however, appears in July. It is compendious, that is to say it deals with a whole variety of subjects, both those common to all departments and those affecting single departments only. Points at issue are outlined briefly and judgments and recommendations are short, firm and measured.

Reports are technically made to the House of Commons, as they must be, but, in fact, it is to the Treasury that much of their contents is directed. From the earliest days the Treasury adopted the practice of writing Minutes on them, and although a Committee decision has no force in itself "it is for the Treasury to take the matter up with the department con-

cerned".¹ The Treasury acts too under some compulsion for, by long standing convention, the recommendations in reports are usually implemented unless there are very strong reasons to the contrary. The full weight of a senior committee is behind them and, from the beginning, the Treasury recognized that this attention and respect is both constitutionally desirable and the necessary price to be paid for the invaluable support the Committee gives to it in its dealings with other departments.

The combined weight of Committee and Treasury is enough to ensure that departments take notice of and implement recommendations. It is well known that they entertain a lively apprehension of the Committee. Every investigation has made this clear and the Rt. Hon. Herbert Morrison has said that it is "a real factor in putting the fear of Parliament into Whitehall".² This ability to get its recommendations carried out is one of the Committee's greatest achievements. It has joined its own authority and the knowledge of the Auditor General with the willing co-operation of the Treasury to complete an effective process of control.

The House itself only rarely discusses Accounts Committee reports. There is no need to and it is all to the good that this important work can be carried out without taking up valuable time on the floor of the House. Far from the Committee suffering by reason of this neglect, it is perhaps partly because it is able to bypass the lengthy and politics-ridden processes of the full House that action on reports is achieved so smoothly.

* * *

This description of the procedure and techniques of the Public Accounts Committee makes clear the nature of the control it effects. It is, first, *expert* control. Full use is made of a professional audit, evidence is taken from experts only, and most of the questioning is done by the Chairman. To these all-important facts may be attributed the excellence of its reports. That is not, however, to say that the Committee should be made smaller and more expert. The weight added

¹ Lord Kennet, *The System of National Finance*, 3rd Edition, p. 111.

² H.C. 189-1 (1945/46), Evidence, Q. 3227.

by less active, but senior and representative Members of Parliament is of great value.

It is, second, a *financial* control. The Committee is exactly what its name indicates. Its main work lies in the realm of accounts, accounting and financial procedure and its machinery is devised primarily for that purpose. It has, however, developed a powerful control of contracts and is a valuable promoter of economy and efficiency, although its limits in these fields are clear.

It is, third, a *judicial* control and it is divorced from party politics. "The law is clear, the past actions of the department are clear" and members "have to decide whether the law and the past actions of the department have coincided".¹ To do this, they have adopted a judicial procedure with expert evidence on the facts and the law and their reports have a judicial tone.

It is, fourth, a control the main effect of which is *deterrent*. It is thus impossible to assess the Committee's value in any quantitative terms, but witnesses from all sides have consistently testified to its worth in this respect.

It is, finally, a control, which, *though ex post facto, is not a mere post-mortem*. The Auditor General conducts a running audit and most points are cleared up at once. Decisions on disputed points are implemented, affect future expenditure and procedure, and thus lead to continual improvement.

It is to these qualities that the Public Accounts Committee owes its success. An Accounts Committee ought to be an expert and a financial body. The ability to achieve a reputation for being judicial and non-party means that it can operate with an assurance and a continuity otherwise impossible. Its inevitability and its achievement in securing Treasury co-operation to implement reports, together with the quality of its work, are probably the most significant causes of its success.

(Concluded)

¹ Mr. George Benson to the Select Committee on Procedure, H.C. 189-1 (1945/46), Evidence, Q. 3958.

THE STATUTORY ORDERS (SPECIAL PROCEDURE) ACT, 1945

by HUGH MOLSON

(Member of Parliament for The High Peak, Derbyshire)

ON the 9th November, 1949, the Parliamentary Secretary to the Ministry of Health moved in the House of Commons "that an Humble Address be presented to His Majesty praying that the provisions of the Statutory Orders (Special Procedure) Act, 1945, be applied to Orders hereafter to be made under any of the enactments specified in the following table" which included 11 Acts of Parliament ranging from 1868 to 1939. It is worth considering the Special Procedure established in 1945 and the experience which we have had of it since then.

Until the first half of the nineteenth century, any Local Authority or private individual could obtain special powers only by promoting a Private Bill. In 1845 the Inclosure Commissioners were given power to make orders for the enclosure of certain common lands upon certain conditions; as they were not permanently valid without being appended to and confirmed by an Act of Parliament, they were called Provisional Orders. This example was followed in the case of the Gas and Water Facilities Act, 1870, the Public Health Act, 1875, and the Electric Lighting Act, 1882. The procedure was that the Orders were scheduled to a Provisional Orders Confirmation Bill which was then dealt with by Parliament as local legislation. As the need for special powers for authorities of various kinds has increased during the twentieth century, two new procedures have been evolved. Some Orders can be made which are not subject to review by Parliament and there are also Special Orders. It was because neither of these was considered entirely satisfactory that the Special Procedure was devised which was intended to combine the best features

of the Provisional Order and the Special Order "and, so far as practicable, to avoid the disadvantage of either of the systems." (*Hansard*, v. 414, c. 1374/87.)

When explaining the Statutory Orders (Special Procedure) Bill in the House of Commons on the 18th October, 1945, Mr. Herbert Morrison described the Provisional Order procedure as "slow, cumbersome and expensive" and he proceeded to describe the procedure and the delays which it might involve. He then went on to say that many Orders, although not suitable for consideration on the floor of the House, required to be carefully considered and could not be fully and satisfactorily examined without the apparatus of maps, diagrams and so forth—which could only be employed in a committee upstairs when Counsel are heard for and against the Order if it is opposed.

The Special Procedure was originally worked out while the Coalition Government was in office with special reference to that Government's White Paper on Employment Policy which contemplated the rapid undertaking of large-scale works if there were danger of a recurrence of mass unemployment. It was first foreshadowed in the White Paper on "A National Water Policy" which was the precursor of the Water Act, 1945. It was applied in the Town and Country Planning Act, 1944, and in the Local Government (Boundary Commission) Act, 1945, which was in effect repealed on the same day that the Special Procedure was extended to other Acts on the Statute Book. In his introductory speech, Mr. Morrison explained that the new procedure would be extended to cover a wider sphere after experience had been gained. "The present Government agree with the late Government that the new procedure is experimental and that we shall have to watch how it goes. We think also that it might be wise to defer its further application until some experience of its working has been gained."

When the Bill was first published in 1945, a group of Conservative back benchers who sought to preserve parliamentary control over delegated legislation put down a reasoned amendment declining "to give a Second Reading

to a Bill which fails to expedite or improve the present long-established Provisional Order Procedure, but deprives the subject of his present absolute right to have his petition heard by an impartial committee of this House and moreover diminishes the control of Parliament over delegated legislation." When the same Bill in a slightly amended form was re-introduced by the new Government into the House of Commons elected in 1945, I was one of the few survivors of the earlier cave of opposition and I tried to do what I could to state the case against the measure.

The general idea of the Bill was to distinguish two kinds of petition against an Order, those which only sought to effect a minor amendment called "Petitions for Amendment" and those which in effect opposed the policy of the Order called "Petitions of General Objection". In the Explanatory Memorandum prefixed to the Bill, the distinction was explained in these words: "The new feature proposed is that a distinction should be drawn between objections based on broad grounds of policy and those based on individual interests so that the former may be decided on the floor of the House and the latter referred to a joint committee."

This distinction was further explained by the Lord President of the Council in the following words: "The Bill provides that in the case of petitions of general objection—that is, petitions which raise the whole policy of the Order—the House can either decide the issue on the floor, one way or the other, or it can refer it to a joint committee." We did not object to this difference in the treatment of the two kinds of objection, provided that the distinction could be clearly and accurately drawn. In the text of the Bill, however, the distinction was differently worded as follows:

- (a) "A petition praying for particular amendments . . . shall be known as a petition for amendment;
- (b) A Prayer against the Order generally . . . shall be known as a petition of general objection."

We did not think that this wording clearly differentiated between objections to detail and objections to policy. Accordingly in the Committee Stage we sought to substitute the

wording in the Explanatory Memorandum, which of course there had no legal validity and is not even reprinted when the Bill becomes an Act, for the words used in the text of the Bill. As usual, however, the parliamentary draftsmen preferred their own wording and the Government accordingly resisted the amendment, but gave an undertaking to bear the point in mind when new Standing Orders were being drafted.

The new procedure imposes upon a committee of two, the Lord Chairman of Committees of the House of Lords and the Chairman of Ways and Means of the House of Commons, the heavy responsibility of deciding whether any particular petition is one of general objection or of amendment. I maintained throughout the proceedings on the Bill that in many cases it would be impossible for the two Chairmen in fact to decide whether any particular petition did go against the policy of the Order or was one of detailed amendment only. Some confirmation of my view is provided by what happened in the case of the Mid-Northamptonshire Water Board Order. In this case the Chairmen certified the petitions against the Order as petitions for amendment, but when the Joint Committee gave effect to some of these petitions by amending the Order, the Minister of Health considered the changes so destructive of his policy that he incorporated the amended Order in a Bill and had it amended so as to secure its enactment in its original form in accordance with Section 6 (3) of the Act.

In the reasoned amendment to the Special Procedure Bill, we said that the new procedure "deprives the subject of his present absolute right to have his petition heard by a Parliamentary Committee of this House". Under Provisional Order Procedure, any such Order if opposed had to be referred to a small Select Committee, usually consisting of four Members, which sat upstairs and heard Counsel argue for the Order on behalf of the promoters and against it on behalf of the petitioners. Under the Special Procedure, if the Chairmen decide that a petition is one of General Objection, the issue goes in the first place for decision to the House of Commons. Let us see what this involves in some imaginary case. Let us suppose

that some water authority has made an Order which, however reasonable from its own point of view and of the majority of its consumers, is deemed by some small local authority to be harmful to the interests of its inhabitants. In such a case that small authority will lodge a petition of General Objection. It will then have to persuade its Member of Parliament to move on the floor of the House that the Order be annulled. Generally speaking, the Minister of Health supports the Order. The private Member of Parliament is, therefore, put into the almost hopeless position of having to persuade a number of his friends to stay in the House after most of the day's work is over in order to support him in moving the annulment of an Order which will probably be supported by the Minister of Health and therefore by the Government majority who will have been purposely retained in the House by the Government Whips. It was for that reason that I used with perhaps wearisome repetition throughout the different stages of the Bill the phrase that a Government could use this procedure as a bulldozer for sweeping away opposition. Manifestly, this was a serious reduction in the rights of the subject—whether a Local Authority or an individual—because under the previous Provisional Order Procedure, the small Local Authority could have their case argued by their Counsel as a matter of right with plans and diagrams upstairs in the forensic atmosphere of a Select Committee.

The Government in the end gave assurances that these powers would not be used so as to prevent petitions of General Objection being referred to a Joint Committee if there were a reasonable *prima facie* case in favour of doing so. On the 12th November, 1945, Mr. Arthur Greenwood, then Lord Privy Seal, who was in charge of the Bill, wrote to me as follows:

“Lastly, you ask for a general undertaking on the part of the Government at Third Reading that we shall not use our majority as a bulldozer, to prevent petitioners from obtaining a fair hearing by the Joint Committee. It must in the nature of things be for the Government of the day to decide upon each case as it arises, whether it is of

sufficient importance to use the power which with our British system, attaches to possessing a majority in the House of Commons. It has, however, never been considered by the present Government (and I have reason to believe it was not considered by the Coalition) that this Bill was in any sense a bulldozer."

Accordingly, to obtain a public statement to this effect on the Third Reading, I said "I would ask the Lord Privy Seal to give an undertaking now that this Government, at any rate—and if they set an example, perhaps other Governments will follow it—will not use their majority as a 'bulldozer', in order to prevent petitioners from having a fair opportunity of having their case heard in a judicial atmosphere upstairs, even if it is going to delay matters to a certain extent." (*Hansard*, v. 415, c. 2177.)

The Lord Privy Seal replied:

"I cannot speak for any future Government, least of all for a Government drawn from the opposite benches, but I can speak for His Majesty's present Government. I do not want to mince my words at all, and I give the most specific assurance that we do not regard this Bill as a weapon with which to beat down opposition or to carry proposals through without due regard to all the interests who ought to be considered. I think it would be wrong to use the Bill in that way, and so long as this Government continues I can assure hon. Members that this specific pledge which I have given will be honoured to the full." (*Hansard*, v. 415, c. 2180/1.)

From the above quotations it will be plain that Mr. Aneurin Bevan was not guilty of any breach of this undertaking when in the case of the Mid-Northamptonshire Water Board Order he considered himself obliged in order to give effect to his policy to enact the Order in its unamended form by means of a Public Bill. We who had opposed the Bill had never questioned the constitutional propriety of a Minister in such a case using the Government's majority for this purpose. In the

same speech in which he had given the previous undertaking, the Lord Privy Seal added:

“The present Government are just as anxious as were the previous Government, which first introduced this Bill, that all interests which ought to have a hearing shall be heard but—and I do not think that hon. Members opposite can dissent from this—it must rest with the Government of the day, whatever its complexion, to advise Parliament whether a particular issue raised on a Ministerial Order is or is not one of policy on which the Government may feel bound to use their parliamentary resources in support of their point of view. I should imagine that would be accepted by the Front Bench opposite. I gather that it was certainly in the mind of the previous Government when the Bill was under consideration by them.” (*Hansard*, v. 415, c. 1281/2.)

There were two features of the Bill which I sought to have amended in the Committee Stage. The Bill provided that where the Minister deemed it necessary, after an Order had been amended by the Joint Committee, to incorporate it in a Bill and re-introduce it in its amended form, the Bill should be deemed to have passed the Committee Stage unamended and that, therefore, the Order would only have to run the gauntlet of a Third Reading. I pointed out that this was exactly what the Order had not done; it had not passed the Committee Stage unamended, but on the contrary it had been so much amended that the Minister was no longer prepared to approve it. It ought, therefore, to go to the House of Commons in the usual parliamentary manner for the Report Stage—where the House could, if it so wished, reverse the decisions of the committee. The Lord Privy Seal did not accept this amendment on the Committee Stage, but after consultation accepted on the Report Stage an amendment which I had agreed with the parliamentary draftsmen. This provided that the Order shall be appended to a Bill and submitted to the House in the amended form in which it left the Joint Committee. As it goes to the House for the Report Stage, it is then

open to the Government of the day to invite the House to reverse the amendments made on the Committee Stage by the Joint Committee. This was in fact the procedure followed in the case of the Mid-Northamptonshire Water Board Order Confirmation Bill, for on the 4th May, 1949, the Government moved a series of amendments on Report Stage in order to restore the Order to the form in which it had originally been introduced before it had been substantially amended by the Joint Committee upstairs.

The Lord Privy Seal was, however, less accommodating on another matter and what I regard as an anomaly there has been preserved. In the case of a Petition of General Objection, it is not possible for a substantive motion to be moved on the floor of the House that the matter be referred to a Joint Committee. It is necessary first that two Members, whom I may in this connection quite properly describe as "stooges", should move and second that the Order be annulled; only then will it be competent for two other Members to move as an amendment to the Annulment Motion that the petition of General Objection be referred to a Joint Committee. This follows inevitably from the wording of Section 4, Sub-Section 1 and the proviso thereto, which reads as follows:

"Provided that on the consideration of any motion for the annulment of an Order under this Sub-Section, either House may, if . . . the House is of opinion that the question of annulment ought not to be determined until that objection has been further examined, order that the petition be referred to a Joint Committee of both Houses."

It is surely a clumsy and circuitous procedure that special consideration by a Joint Committee as to the merits of a petition cannot be moved unless previously an annulment of the Order has been proposed.

The question now arises, what has been the experience so far gained of the Special Procedure? It must be freely admitted that several Orders have been easily and expeditiously passed where there has been no opposition, and it may be that they have taken effect more rapidly than Provisional Orders

would have done under the old procedure. We have in fact only had one case where a Special Procedure Order has been opposed and that is the case already referred to of the Mid-Northamptonshire Water Board Order. As has already been stated, the Chairmen decided in that case that all the petitions against the Order were Petitions for Amendment. In taking this view they rejected the arguments put forward on behalf of the Ministry of Health. This solitary example of a Special Procedure Order being opposed does, therefore, as I have already claimed, tend to confirm my view that the Chairmen could not possibly tell without a detailed enquiry, which they were not empowered to conduct, whether any particular petitions did or did not question the policy of the Order.

One of the principal advantages claimed for the Special Procedure when the Act was under discussion in 1945 was that it would be speedy. In the case of the Mid-Northamptonshire Water Board Order, which provides us with our only experience, this claim cannot be sustained as the following timetable will show:

Order first advertised	.. ..	December, 1947
Local Enquiry at Northampton	..	April, 1948
Draft Order as proposed to be made by Minister published	.. ..	October, 1948
Joint Committee of both Houses of Parliament	.. ..	February, 1949
Confirmation Bill introduced into House of Commons	.. ..	April, 1949
Royal Assent	.. ..	31st May, 1949

Provisional Orders generally take not more than six to nine months in contrast with the eighteen months of this Special Procedure Order. It is only fair to say that the local enquiry at Northampton in April, 1948, was abortive, but it was part of the purpose of the Special Procedure that a local enquiry should contribute to the speed of the procedure.

The next point is not one of substance, but of procedure. When the meaning of the 1945 Act came before the Joint Committee on the first and only occasion, almost all the experts agreed that upon a true construction of the Act a

somewhat strange procedure had to be followed. Whereas under Provisional Order Procedure, the promoters of the Order had first to explain the purpose of the Order and deploy their arguments in support of it, it was found that the Statutory Orders (Special Procedure) Act, 1945, had provided for the contrary. The petitioners had to explain why they desired an amendment to the Special Order before the promoters of the Special Procedure Order had explained why they supported it. Thus the Mid-Northamptonshire Water Board was not required to explain all the technical reasons relating to volume of water, rate of flow, levels, etc., before the petitioners had to state their case. Historically it is interesting to note that until some little time before 1834 this procedure was followed in the case of private Bills, but it may be supposed that experience resulted in a complete reversal of procedure being made and the adoption of the more logical procedure under which the promoters state their case first.

To show the significance of the change made by the passing of this Act, it is necessary to emphasize a very important distinction between the new Special Procedure and the old Provisional Order Procedure. When a petition is filed against a Provisional Order, the Department which makes the Order does not, as a rule, appear in support of the Order, but leaves the conduct of proceedings in Committee to the applicants for whose benefit the Order was made. In the case of Special Procedure Orders, however, Standing Order 243, although it authorizes the Minister to transfer his right to be heard in support of the Order to the parties on whose behalf the Order was made, clearly contemplates that normally the Minister will himself support the Order.

This new activity of the Government in supporting an Order arises fundamentally from the underlying purpose of the Special Order Procedure. When Mr. Churchill first announced it on the 20th June, 1944, he said:

“It would not, however, be open to petitioners . . . to petition against the main purpose of the Order.” (*Hansard*, v. 401, c. 34/5.)

Fortunately this drastic proposal was somewhat modified

in the course of the consultations which preceded the introduction of the Bill. It remains the case, however, that unless a Petition of General Objection has not only been lodged but has been referred to a Joint Committee, that Joint Committee is not empowered to question the policy underlying the Order.

It is in fact an extension of the rule which applies when a Private Bill is opposed. If a petitioner prays to be heard only against certain clauses of a Private Bill, he cannot be heard against the general case made out in favour of the Private Bill. If he wished to do that, he would have to dispute the preamble. The trouble in the case of the Special Order Procedure is that it reduces to two cases what ought to have been three cases. It is logically possible for petitioners:

- (a) to dispute the policy of an Order,
- (b) to admit the policy but say that it is not applicable to those circumstances, or
- (c) to admit both (a) and (b) but to ask for certain minor amendments.

Objections falling under (b) above have to be put into the category of (a) or (c) by the Chairmen.

There has not been a single case of a Petition of General Objection against a Special Order. There is, therefore, no experience by which we can judge whether the procedure will operate satisfactorily in such a case. It, therefore, seemed to me reasonable and proper to argue against the Humble Address that we had not had the experience that would justify an extension of this procedure to the 11 Acts of Parliament contained in the Schedule.

Delegated legislation is an important realm of parliamentary action where it is necessary to combine full protection of the rights of minorities, whether individuals or local authorities, with the reasonable demands of the majority and large public authorities. It is not clear that this sudden extension of the Special Procedure is a step in this direction. There is not sufficient evidence to prove the case of the Government or to prove the case of those of us who have opposed this policy both under this Government and the last one. It is, therefore regrettable that this extension has so prematurely been made.

CONSTITUTIONS OF
THE BRITISH COLONIES—IV

MISCELLANEOUS

Information prepared by SYDNEY D. BAILEY, with a
prefatory note by the Rt. Hon. JAMES GRIFFITHS, M.P.
(Secretary of State for the Colonies)

I am glad to have this opportunity of paying tribute to this useful series of articles. They have brought together for the first time a great deal of information which previously was not readily accessible either to the general public or to those who are concerned with the Colonies in their work or studies.

A valuable contribution has been made to knowledge about the Colonial territories; and, at this stage of Commonwealth history, it is very important that there should be among the people of this country the widest knowledge of Colonial institutions and ways of life, so that a true feeling of family relationship may be engendered and the great work of Colonial advancement be supported by full understanding of the heritage which we share with the Colonial peoples and our interdependence with them in future prosperity.

Perhaps I may be permitted to leave a few thoughts by way of general comment in the minds of those who have read these articles. They will have observed the diversity of the Colonial scene and the unevenness of constitutional progress: and, at the same time, the unity and consistency of the underlying principles which are steadily guiding the Colonial peoples towards responsible status in the Commonwealth. I would ask readers to remember that the scene, though crystallized in these articles at a moment of history, is in real life never static. There is never a moment at which the movement of political and constitutional growth checks or pauses. Great changes are even now under way in West Africa, for example: throughout the Colonial territories new ideas and fresh advances are being canvassed: and all peoples, as they embark upon new responsibilities, are in effect laying the foundations for further progress in the future.

Finally, I would like to set the constitutional scene in perspective against our Colonial policy as a whole. While the steady progress towards responsible forms of Government continues, every effort is being made to develop the material resources of the territories so that their political structure may be firmly based on a sound economy, able to support the social standards and services needed if political institutions are to be worked by knowledgeable and responsible people. By increasing educational facilities at every level, by encouraging voluntary social movements and using all the methods of community education, and not least by adapting, expanding and modernizing the local government institutions in the territories, we are seeking to foster and train that sense of social responsibility and service on which effective democracy depends.

JAMES GRIFFITHS.

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THIS last paper outlining the Constitutions of British Colonies is concerned with three groups of territories:

- (i) **Mediterranean**—Cyprus, Gibraltar, and Malta.
- (ii) **Indian Ocean**—Aden, Mauritius, and the Seychelles Islands.
- (iii) **Atlantic Ocean**—St. Helena, Ascension Island, and Tristan da Cunha.

Each of these territories is of strategic importance. Gibraltar, Malta, Cyprus, and Aden lie along the Suez Canal route to India and the Far East. Seychelles and Mauritius lie off the East coast of the African continent, Ascension Island, St. Helena, and Tristan da Cunha off the West coast.

In the development of satisfactory political institutions in some of these territories, particularly acute difficulties have had to be faced. Malta enjoyed responsible government from 1921 until 1930, but in the latter year the Constitution was suspended until 1932 and again in 1933. In 1947 responsible self-government was restored. Even now the island faces economic problems of an unusually perplexing kind. In Cyprus a vociferous political element has demanded union with Greece, and insistence on this demand has made all attempts at further constitutional progress nugatory. The Colony of Aden has a normal Colonial administration under a

Governor, but the Protectorate of Aden, with an area greater than the United Kingdom, is inhabited by 650,000 people with little experience of stable political institutions. In Mauritius there have been difficulties due to the fact that two-thirds of the population is Indian by race in an island in which the culture is predominantly French.

In their different ways these are illustrative of the sort of difficulties which face Colonial powers that seek to secure the political advancement and eventual self-government of the peoples of dependent territories. There are two extremes between which a middle course must be found. One extreme is for the Colonial power to maintain a paternalistic control so long that discontent cannot find an outlet through constitutional channels but is driven underground. The other is to transfer power to indigenous hands before sufficient experience of constitutional government has been obtained, thus leading to an unstable political life.

It is necessary to repeat the words of caution which pre-faced the earlier papers in this series. First, the need to present the information in summarized form inevitably makes it incomplete. Secondly, constitutional changes in the Colonies are constantly taking place. I have outlined the constitutional position as it was in April, 1950.

ADEN. *Colony and Protectorate.* Aden peninsula occupied in 1839, remainder of Aden colony secured by purchase between 1868 and 1888. Chiefs accepted British protection at various times between 1839 and 1914.

<i>Population: Aden Colony.</i>		Arab	58,455
		Indian	9,456
		Jewish	7,273
		Somali	4,322
		European	365
		Others	645
			<hr/> 80,516 (1946)
Protectorate			<hr/> 650,000 (rough estimate)

Governor: Possesses reserve powers.

Executive Council of the Colony: The Governor presides and the Council consists of the Chief Secretary, the Attorney-General, the Financial Secretary, and such other persons as may from time to time be appointed.

Legislative Council of the Colony: The Governor presides and the Council consists of four *ex officio* members (the Senior Officer Commanding British Forces, the Chief Secretary, the Attorney-General, and the Financial Secretary), not more than four other official members, and not more than eight appointed unofficial members.

Protectorate: The tribes nominate their own chiefs who must subsequently be recognized by the Governor. The Chiefs are advised by political officers under a British Agent for the Western Aden Protectorate and a British Agent for the Eastern Aden Protectorate: the latter is also Resident Adviser to the Sultans of the Hadhramaut States (Mukalla and Seiyun).

ASCENSION ISLAND. *Dependency of St. Helena*. Occupied in 1815. Made a Dependency of St. Helena in 1922.

Population: 191 (1948), of whom 135 were St. Helenians in the employment of Cable & Wireless Ltd.

Note: The Government of St. Helena is represented by the local manager of Cable & Wireless Ltd., who is appointed a Justice of the Peace and Resident Magistrate.

CYPRUS. *Colony*. Occupied in 1878 and formally annexed in 1914.

<i>Population</i> : Greek-Cypriots	361,373
Turkish-Cypriots	80,361
Others	20,584
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	462,318 (1946)

Governor: Has the power to legislate.

Executive Council: The Governor presides and the Council consists of the Colonial Secretary, the Attorney-General, the Treasurer, and two unofficial members appointed by the Governor.

GIBRALTAR. *Colony.* Captured from Spain, 1704, and formally ceded by Treaty of Utrecht, 1713.

Population: 22,532 (1947 estimate), mainly Europeans.

Governor and General Officer Commanding the Garrison: Has a general reserve of legislative power enabling him to pass into law any measure necessary in the interests of defence, public order, public faith, or good government.

Executive Council: The Governor presides and the Council consists of four official members (the Combatant Military Officer next in seniority after the Governor, the Colonial Secretary, the Attorney-General, and the Financial Secretary), and three unofficial members appointed by the Governor.

Legislative Council: The Governor presides and the Council consists of three *ex officio* members, two nominated members (of whom both may, and one must, be an official), and five elected members.

Franchise: British subjects over 21 years, other than members of the Armed Forces, who have resided in Gibraltar for at least one year.

MALTA. *Colony.* Occupied during French Revolution and recognized as part of British Empire in 1814.

Population: 288,903 (1946), mainly European.

Governor: Possesses reserve powers.

Executive Council (Ministry): When practicable the Governor presides; the Council consists of the Prime Minister and not more than seven other Ministers, all of whom are members of the Legislative Assembly.

Nominated Council: Defence, external affairs, and related matters are reserved to the Governor who is advised by the Nominated Council. This consists of two *ex officio* members (the Lieutenant-Governor and the Legal Secretary) and three officers, one from each of the Services.

Privy Council: Consists of the Executive Council and the nominated Council sitting together under the Chairmanship of the Governor.

Legislative Assembly: Consists of forty members elected by proportional representation. The Council passes Bills for the

peace, order and good government of the island, subject to the limitations regarding reserved matters.

Franchise: Universal suffrage.

MAURITIUS. *Colony.* Captured from French in 1810. British possession confirmed 1814.

<i>Population:</i> Indian	278,803
Chinese	12,380
Others	147,520

438,703 (1948)

Governor: Possesses reserve powers.

Executive Council: The Governor presides and the Council consists of three *ex officio* members (the Colonial Secretary, the Procureur and Advocate-General, and the Financial Secretary), and four unofficial members of the Legislative Council selected by their fellows for appointment by the Governor, and such other persons as His Majesty or the Governor may appoint.

Legislative Council: The Governor presides and the Council consists of the *ex officio* members of the Executive Council, twelve members nominated by the Governor, and nineteen elected members.

Franchise: British subjects of either sex aged 21 years or over, with certain literacy, armed forces, or business premises qualifications.

ST. HELENA. *Colony.* Annexed by East India Company in 1659. Became Crown Colony in 1834.

Population: 4,748 (1946), mainly of mixed descent.

Governor: Possesses the power to make Ordinances.

Executive Council: The Governor presides and the Council consists of the Officer Commanding Troops (when an officer holding this appointment is serving in the Colony), the Government Secretary, the Colonial Treasurer, and such other persons holding office under the Crown as the Governor may nominate.

Advisory Council: The Governor presides and the Council

consists of not less than six unofficial members, appointed by the Governor, one of whom is appointed as the representative of, and after consultation with, firms engaged in the flax milling industry in the Colony, and two of whom are appointed as representatives of, and after consultation with, the Friendly Societies.

SEYCHELLES. *Colony.* Captured from French in 1794. British possession confirmed 1814.

Population: 34,632 (1947). The European population comprises about 3 per cent. of the total. The rest are African or coloured. There are also a few Indian traders.

Governor: Possesses reserve powers.

Executive Council: The Governor presides and the Council consists of the Secretary to the Government, the Attorney-General, the Treasurer, and such other persons (one of whom must be unofficial) as His Majesty or the Governor on instructions may appoint.

Legislative Council: The Governor presides and the Council consists of six official members (the Secretary to the Government, the Legal Adviser, the Treasurer, the Senior Medical Officer, the Director of Education, and the Director of Agriculture), two unofficial members nominated by the Governor, and four elected members.

Franchise: Literate British subjects of 21 and over who have resided in the Colony for at least one year and pay either income or property tax.

TRISTAN DA CUNHA. *Dependency of St. Helena.* Annexed in 1816. Made a Dependency of St. Helena in 1938.

Population: 230 (1945), nearly all born in the island.

Administrator: The Government of the island is carried on by an Administrator, appointed by the Governor of St. Helena.

(Earlier papers in this series have dealt with Colonies in the Western Hemisphere [Vol. II, No. 2], the African Colonies [Vol. II, No. 4], and Colonies in the Far East and Pacific area [Vol. III, No. 2].)

CORRESPONDENCE

Sir,

May I apologize for a slip of the pen, which I discovered only after the publication of my second article on the struggle for parliamentary institutions in Germany.

The footnote on p. 321 (Vol. III, No. 2) should refer to "the Duke of Cambridge" and not "the Duke of Connaught". It was George, second Duke of Cambridge (1819-1904), a cousin of Queen Victoria, who became General Commanding-in-Chief in 1856, and as such opposed the reform plans of Gladstone's Minister of War, Cardwell, in 1870. On his somewhat involuntary retirement in 1895, the Queen expressed the wish that her son, the Duke of Connaught (1850-1942), should succeed him, but the Government did not comply with her wishes.

Yours sincerely,

Richard K. Ullman.

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BRITISH GOVERNMENT PUBLICATIONS

Most of the British Government publications listed below are of parliamentary or constitutional interest. All Government publications, including Hansard for the House of Lords and House of Commons (daily parts, weekly editions, or bound volumes) can be ordered through the Hansard Society.

Bechuanaland Protectorate. Succession to Chieftainship. (Cmd. 7913.) 3d.

Boundary Commission for England. Report with respect to Birmingham. (Cmd. 7787.) 2d.

British Electricity Authority. Report and Accounts, 1947-9. 5s. 6d.

Consolidation Bills, 1948-9. Seventh Report by the Joint Committee. (H.L. 29-VI, 184, H.C. 271.) 6d. Eighth Report. (H.L. 29-VII, 185, H.C. 270.) 9d. Ninth Report. (H.L. 29-VIII, 202, H.C. 284.) 3d.

Election Commissioners Bill. (H.L. 190.) (H.C. 217.) 4d.

Electoral Registers Bill. (H.C. 205.) (H.L. 206.) 3d. Amendments (H.L. 206a.) 3d. Lords Amendments. (H.C. 222.) 3d.

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NEW VENTURE

We have received a copy of the first issue of *MP: the Month in Parliament*. (Vol. I, No. 1, April 1950). This is published by Tower Bridge Publications Ltd., Grays Inn Chambers, 20 High Holborn, London, W.C.1, and costs 1s.

REVIEWS

The Historical Development of Private Bill Procedure and Standing Orders of the House of Commons.

By O. Cyprian Williams. H.M. Stationery Office.
Vols. I and II. 17s. 6d. each.

The private bill procedure of the House of Commons, says Sir William Holdsworth in his *History of English Law*, "is a unique method of using the legislative power of the state. It is a method which combines the power to act freely in the interests of the state which is possessed by the legislator, with the duty to weigh the comparative merits of the cases of the promoters and opposers which is imposed upon the judge". But although Clifford in his classic *History of Private Bill Legislation* made excursions into the domain of procedure, and F. H. Spencer devoted a chapter of his interesting and valuable monograph on the subject of local acts, *Municipal Origins*, to private bill procedure between 1700 and 1835, the history of the evolution of what has been described as "a piece of constitutional machinery which could never have been devised by a person who was constructing a code of constitutional law on logical *a priori* principles" has hitherto remained unwritten. By filling this gap, Dr. Williams has deserved well of all who are interested in legislative procedure and methods.

Although, as Dr. Williams shows, a number of Standing Orders relating to private bills were made from 1685 onwards, it was not until towards the end of the third quarter of the eighteenth century that the increase in the volume of private bills and the change in the objects for which parliamentary powers were sought, compelled the House of Commons to turn its attention to the question of the suitability of private bill procedure and to make the first of the series of reforms which have resulted in the system we know today. In 1825 the first attempt was made to reform the constitution of private bill committees. By 1848, Dr. Williams says, "in all

but one or two essentials the code of Standing Orders had assumed the form and context which it has today". By 1876 the formative period had come to an end. The subsequent history of private legislation procedure, as he says, "became more concerned with detail than with broad measures of experiment and reform".

Under the existing procedure private legislation is delegated almost completely to committees. The first step in this direction was not the result of any deliberate decision on the part of the House. In the eighteenth century the functions of a committee on a private bill were much the same as those of a committee on a public bill today, i.e., to consider the clauses of the bill and make whatever amendments they think fit. Parties who objected to particular provisions in the bill might be heard in support of their objections, but objections to the principle of the bill could not be entertained by the committee. Such objections could be entertained only by the House. When objection was taken to the principle of the bill by parties injuriously affected, such parties were heard in person or more usually by counsel at the bar of the House on the second or third reading, or when the report for the committee on the bill came up for consideration. Early in the nineteenth century pressure of business forced the House to give up hearing parties. Dr. Williams concludes from a comparison of treatises by Sherwood and other practitioners that the practice died out between 1820 and 1830. Reference to the Journals of the House suggests that it ceased considerably earlier. The last instance of counsel being heard at the bar in opposition to a private bill seems to have occurred in 1803.

The unwillingness of the House to afford parties injuriously affected by private bills an opportunity of attacking the principle of the bill on second reading, encouraged committees to amplify their jurisdiction and allow opponents to impugn the principle of the bill in committee. It is this change in practice and not, as Dr. Williams says on page 57, that "by which the committee first considered the preamble and the counsel for the promoters opened the proceedings by putting forth the case for the preamble", that Sherwood

defends. So long as the rule that opposition to the principle of a private bill could not be entertained by the committee remained in force, it mattered little whether the promoters or the opponents began. It is a pity Dr. Williams did not think it necessary to ascertain what Sherwood says in the first edition of his treatise, published in 1828, six years earlier. In 1830 the Speaker is found still ruling that "when objection is made to the whole bill, the committee cannot hear the petitioners because the House will not delegate to a committee the power of deciding upon the rejection of a measure the principle of which it has already adopted in the second reading", and that "the House in committing a bill, adopts the principle and merely sends to a committee to look to its defects for the purpose of seeing if it operates with injustice against any party." It is difficult to believe that the change in practice can have taken place between 1830 and 1834. On the other hand a major change in practice such as this could hardly have occurred without the Speaker becoming aware of the fact. Possibly there were at that time two doctrines, one held by the Speaker and the more conservatively minded practitioners such as the author of *Practical Instructions on the Passing of Private Bills through both Houses of Parliament*, published in 1827, a work to which Dr. Williams makes no reference, the other held by Sherwood and acted upon by committees.

It was under colour of discharging the duty of examining the allegations of the bill that committees on private bills extended their jurisdiction. The preamble of every private bill concludes with a recital that the measure is expedient. By treating this allegation as a statement of fact which required to be proved committees drew the principle as well as the provisions of the bill into their net. It would be interesting to know what the doctrine on this subject was in the eighteenth century. It may be that the truth of the allegations was considered to be established by the act of the House in reading the bill a second time. This supposition derives confirmation from the fact that (as far as the present reviewer is aware) there is no instance of a committee on a private bill reporting that the

allegations contained in the preamble of the bill had not been proved to their satisfaction earlier than 1805. Whatever may have been the case where the bill was not opposed, proving the preamble was never a mere formality when the bill was opposed. It is true that committees did not always discharge their duty of discriminating between, and adjudicating upon, the conflicting claims of promoters and opponents in a judicial frame of mind to judge from the letter, printed by Mr. and Mrs. Hammond in *The Village Labourer*, in which George Selwyn describes his experiences as chairman of "a committee absolutely of Almack's", which considered an opposed enclosure bill in 1775. It is also true that the statement in *The Liverpool Tractate*, quoted by Dr. Williams, that "if the point is litigated", the examination of evidence to prove the preamble "may probably be very tedious *especially if the parties have money enough to throw away in feeing counsel*", may be read as implying that it was a foregone conclusion that the committee would find the preamble proved.

It was some time before the House acquiesced in the usurpation by committees of the power to decide upon the principle of the bill. On the first occasion when a committee took it upon themselves (as May says in his first edition) "practically to reverse the judgment of the House", as given on the second reading of the bill, the House recommitted the bill to the committee who, after allowing a decent interval to elapse, reported that they had re-examined the allegations of the bill and now found them to be true. The first instance of the House acquiescing in a report by a committee that the preamble had not been proved seems to have occurred in 1810, but the present reviewer has not succeeded in finding another until 1819. It would be interesting to trace the gradual usurpation by committees of the functions of the House from the relevant entries in the Journals.

The main adverse criticism of Dr. Williams's work must be that it is a mine of information rather than a survey of the historical development of private bill procedure. If he had sifted the more important changes in procedure from the mass of detail, the reader would have gained a clearer idea of

the process by which private bill procedure as we now know it was gradually evolved. There is a good deal to be said for the plan which Sir William Holdsworth followed in his *History of English Law*, of describing the defects from which private bill procedure suffered at the end of the eighteenth and the beginning of the nineteenth century before dealing with the reforms by which these defects were remedied. Sir William Meredith's tale of how he once passed a committee room "where only one member was holding a committee, with a clerk's boy" would have borne telling again. So would Lord Thurlow's animadversions in 1781 on the perfunctory manner in which committees on printed bills discharged their duties. "It was not unfrequent," he said, "for them to decide upon the merits of a bill which would affect the property and interests of persons inhabiting a district of several miles in extent in less time than it took him [as Lord Chancellor] to determine upon the propriety of issuing an order for a few pounds by which no man's property could be injured." Lastly, while a purely chronological narration of events, even if practicable, would have been less suitable for the purposes of the survey than the method employed by the author, chronology seems at times to have been needlessly sacrificed to the exigencies of a treatment by topics, as, for instance, when the evolution of the Private Legislation Procedure (Scotland) Act of 1899 is described before any account has been given of the appointment of the Police and Sanitary Committee in 1882. But even if the book is not easy reading, that does not detract from its value as a work of reference.

Besides those already mentioned two or three other omissions should be noted. The reader is not told that the Standing Order made in 1699 requiring the chairman of a committee on a private bill, when reporting the bill, to acquaint the House that the allegations of the bill had been examined, though general in terms, originally applied only to estate bills and similar measures. Not until 1726 was the rule applied to private bills of all kinds. Nor is any reference made to the incident which, according to Mr. and Mrs. Hammond, was the cause of the Standing Orders dealing with

enclosure bills being made in 1774. The reader is not told that the order first made in 1937 providing that, in the case of an opposed local authority bill containing local legislation clauses, the committee on the bill, when considering such clauses, shall have the assistance of the Speaker's Counsel, has been a dead letter.

Slips must be expected in a work of this type, but to confuse the Mr. Bright who served on a select committee in 1825, with John Bright, then only fourteen years old, is one which ought to have been avoided. On page 187 members of the parliamentary bar are wrongly described as "parliamentary counsel". On page 12 the term "rules of court" and on page 68 the expression "*ex parte*" are misused. Less care seems to have been taken over the account of the existing private bill procedure than over the remainder of the work. Thus on page 7 the reader is told that "compliance with the orders contained in Chapter II [of the Standing Orders] so far as applicable must be proved before the Examiner in the case of all private bills except those in regard to which the Chairman of Ways and Means (or the Chairman of Committees in the House of Lords) [has] certified that the bill is in the nature of a personal bill and that these Standing Orders should not be applicable". On page 17, however, he learns that "under S.O.3 certain bills may be certified *by the Speaker* as being of such a nature that Standing Orders 4-68 should not be applicable." Neither statement is correct. What Dr. Williams means when he says on page 8 that the Standing Orders "are part of the public law" is hard to conceive.

The second volume contains historical notes on the Standing Orders which will obviate much research by officers of the House and practitioners engaged in promoting or opposing private bills. Their practical utility is, however, somewhat diminished by the fact that they are based on the Standing Orders as they were in 1942. The reader who wishes to know the history of a particular order must begin by searching the table on pages 7-10 in order to discover the number of the corresponding pre-1945 order, which it may take him some time to do, as the existing Standing Orders are not arranged

in the table in numerical order. It would, as Dr. Williams says, have cost time and labour to adapt the notes to the revised text of 1945, but the revision of the Standing Orders carried out in that year was of such a fundamental nature that the time and labour would have been well spent.

L. A. ABRAHAM.

(*Mr. L. A. Abraham, C.B.E., is Clerk of Private Bills in the House of Commons.*)

Administrative Tribunals at Work. A Symposium edited by Robert S. W. Pollard. Published under the auspices of the Institute of Public Administration. Stevens. 17s 6d.

Administrative adjudication was one of the subjects of enquiry entrusted to the Committee on Ministerial Powers in 1929 and to that Committee it seemed the major threat against the Rule of Law, as constituting, in Dicey's words, an encroachment on the jurisdiction of the courts and a restriction on the subject's unimpeded access to them. Since then there has been a considerable change in public opinion and it is now generally accepted that the ordinary courts could not meet the requirements of the modern state.

In the second-reading debate on the Legal Aid & Advice Act, 1949, the Attorney-General said that there were approaching one hundred judicial or quasi-judicial tribunals outside the ordinary courts, and these did not include the domestic tribunals of professional bodies such as the Law Society's Disciplinary Committee. The courts have in fact never enjoyed a monopoly; arbitration, for instance, has for centuries been welcomed as an alternative to litigation by the commercial community, and the habit of self-discipline which exists among bodies of persons engaged in the same occupation has a long history.

The argument for administrative tribunals is, shortly, that the cases which come before them cannot suitably be tried in the ordinary courts because they require specialized knowledge, or because the procedure in the ordinary courts is too cumbersome, slow, and expensive in relation to the matters in question. In certain cases, too, the discretionary application of government policy is involved and in these the decision must be left

to the Minister responsible, subject, possibly, to certain minimum requirements of fairness upon which the courts will insist.

The Committee on Ministers' Powers endeavoured to distinguish between judicial, quasi-judicial, and administrative functions, but these overlap and it is difficult to draw a line between them. It is clear that the work of many of the administrative tribunals is not entirely administrative and to this extent the name is a misnomer; it was, for instance, made clear by the Minister of Health in the debates on the Local Government Act, 1948, that the new local valuation courts set up under that Act were to be judicial as distinguished from administrative bodies. It appears, however, that the name has come to stay as denoting not only administrative tribunals in the strict sense but almost any tribunals other than the ordinary courts.

Like so many other English institutions, administrative tribunals have grown up in a haphazard fashion and there is a remarkable degree of variety in their constitution, practice, and procedure. Some of them sit in public and others in secret; in some cases there is a right of appeal and not in others; and in some cases the tribunal is not obliged to give reasons for its decisions. Dr. W. A. Robson in his *Justice and Administrative Law* has suggested some principles by which administrative tribunals can be tested, and one of the objects of Mr. Pollard's symposium is to consider the working of a variety of tribunals in the light of these principles. The seven essays which comprise the volume necessarily deal with only a few of the great number of different tribunals, but those which have been chosen well illustrate their diversity which, generally speaking, has no logical justification. In his introduction Mr. Pollard suggests some rules, based on Dr. Robson's principles, as a sort of lowest common denominator for all administrative tribunals, which are likely to meet with general acceptance. One of these is that an applicant should have an unfettered choice of representative, and Mr. Pollard draws attention to the fact that the Rushcliffe Report proposed that its scheme for State-aided legal advice and assistance should apply to representation before administrative tribunals. The Legal Aid and

Advice Act, 1949, does not embody this recommendation, but administrative tribunals can be included by regulation among the tribunals before which applicants can be assisted.

The seven contributors to the book have a wide variety of knowledge and experience, and the symposium may be recommended as a useful and interesting guide to the subject, both to those who are particularly concerned with it and to the general reader; as Dr. Robson writes in his Foreword, it will help to fill a serious gap in the literature of administrative law.

KEITH MILLER JONES.

*(Mr. Keith Miller Jones, M.A., LL.B., is
the Honorary Solicitor of the Hansard Society.)*

A Report on some methods used to assist Local Government and the Civil Service in the British Zone of Germany. His Majesty's Stationery Office. (Cmd. 7804).
3d.

This Report summarizes one of the most important, creditable, and, let us hope, enduringly valuable pieces of work Britain has done in Germany during the Occupation. In aiming at "the eventual reconstruction of German political life on a democratic basis" the Potsdam Agreement provided for "the restoration of local self-government on democratic principles and in particular through elective councils". The initiation of this formidable task fell to our Military Government. As Military Government found, the task went beyond the mere restoration of the elected councils for which Hitler had substituted his party nominees. The elected councils established in 1808 by von Stein, the Prussian Minister of State, had largely lost the character of organs of local-self government, even before the Nazi regime, under the impact of the authoritarian climate which spread throughout Germany in the nineteenth century. An Executive Committee called the *Magistraat*, comprised of both elected representatives and officials, had developed a substantial responsibility, not only for administration, but for many, and perhaps the major, issues of policy arising in the work of the councils. This body was presided

over by the senior official, who thus became implicated in party politics and was often appointed on party loyalties. The senior official was himself an outposted agent for some decentralized State functions. The State authorities used his services and indeed those of other council officials very freely in every direction, and tended to treat the Council's officials as State servants. The officials were inclined to look for their orders to the State and its intermediate agencies, rather than to their own councils. The local councils had gradually been deprived of all substantial sources of revenue of their own, and existed on doles from central revenues. They allowed their officers a large freedom in spending, once the budget was passed. In short, the spirit as well as the form of German local government reflected, on the one side, the dominance of the local official, and on the other, the prostration of the local authority before the State.

In the new arrangements introduced by the Military Government in the initial stage of occupation, the *Magistraat* did not reappear but, as the White Paper indicates, the old conceptions tended to reassert themselves, and to permeate the new forms, when the German authorities were given primary responsibility for local government in 1947. Much responsibility was delegated to a "Main Committee". The elected councillors on it, "as much through habit as through apathy", were content to leave even policy decisions to the officials. The officials, particularly the older ones who had been *Burgomasters* and who resented the loss of their old powers, were inclined to exploit this position and "arrogate to themselves once more the task of formulating policy".

It was realized that much education was necessary, and the purpose of the White Paper is to outline the measures taken. Steps were taken in discussions with the Germans to emphasize the following principles:—

- (i) That elected representatives should decide policy while officials should give advice and implement decisions.
- (ii) That the policy recommended in Committee should be subject to public debate in Council.
- (iii) That sufficient responsibility over finance, including

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revenue, should be given to local authorities in order to make local self-government a reality.

- (iv) That officials should be non-political and that recruitment and promotion should be on the basis of suitability for the position, and not because of party political sympathy.
- (v) That the local official should be responsible to his own authority, owing no allegiance to superior levels of government.

Discussions were followed up by the extension to German local government personnel of friendly contacts which could demonstrate how such principles were working in practice elsewhere, including Britain. British lecturers visited Germany. Later, a local government school for German personnel was established at Hahnenklee in the Hartz Mountains; and for periods in the summer, conferences were held here at which lecturers drawn from both the elected and official ranks of local government in Britain and other Western democracies met German local government councillors and officers on equal terms, in a sociable atmosphere, and discussed the principles of democratic local government, as well as the practical administrative difficulties of the Germans. In the last year or so the work has been carried on to a still more valuable plane by visits of German councillors and officers to Britain, where they have been "placed out" among English local authorities to see our own system at work and to make contacts with our own local government personnel.

Similar measures have been taken to assist German civil servants.

The White Paper concludes that while there is still much to be done—and work of this kind cannot be expected to show immediate results—there is increasing evidence that what has been done already has had a marked effect. It will, let us hope, influence in the right way the new legislative codes for local government which the West German Government is now settling.

J. H. WARREN.

(Mr. J. H. Warren, M.A., D.P.A., is General Secretary of the National Association of Local Government Officers.)

Irlande du Nord. Par Jean Chérioux. Cahier no. 12 de la Fondation Nationale des Sciences Politiques. Librairie Armand Colin (103, boulevard Saint-Michel, Paris, 5). The Ecole Libre des Sciences Politiques, under its great founder, Emile Boutmy, who wrote a very able work on the British Constitution, attained deservedly a high reputation as a school for the preparation of Civil Servants, and especially diplomatists. It has now changed its name, and become the Fondation Nationale des Sciences Politiques, and gives Diplomas which are much sought after.

By writing a thesis in addition to the ordinary written examination, it is possible for a candidate to get a number of extra marks, and by this means the Professors encourage their students to do original work.

Three of these theses have been included in the present volume, one dealing with Northern Ireland, the second with the State of Connecticut, and the third with New York. The article on Northern Ireland, consisting of some eighty-six pages, has been contributed by a candidate of the name of Jean Chérioux. The author had evidently the laudable intention of publishing a scientific study on the Government and Constitution of Northern Ireland. I cannot, however, agree with Professor Puget, who has written the Preface, that the writer has known how to maintain "sufficient objectivity." He seems to be totally lacking in the necessary historical background, otherwise he surely would not have said (p. 26) that the people of Ulster are faithful to the descendants of William of Orange. This would seem to imply that he really thought that the monarchs of the House of Hanover derived their claim to the throne from a descent from William of Orange. Then again, a little research would have taught him that Tim Healy, whom he describes as one of the first Presidents of Ireland, and a Protestant, was never President of Ireland but one of the last Governors-General: to say that he was a Protestant is almost enough to make this devout Catholic turn in his grave.

It is no doubt difficult for a young student to weigh historical evidence; but it is surprising to find him quoting pamphlets which are notoriously partisan as if they were serious historical

works. It is untrue to say that "de véritables massacres" were carried out by a body, more or less irregular, of 6,000 Special Police (p. 26).

To show the prejudiced position which the author has taken up it is sufficient to quote the statement that the policy of Great Britain has always been to adopt the maxim "Divide in order to reign", and just as she made use for this purpose of the religious antagonism of Mussulmans and Hindus, so in the same way she has carefully kept up the opposition between Orangemen and Nationalists.

There are mis-statements of fact which cannot go uncorrected, such as that the Ulster Exchequer finds the greatest difficulty in meeting all its expenses, and the London Government is compelled to come to its aid by granting subsidies. The facts are that, since the Parliament of Northern Ireland was set up during 1921-22 down to 1949, Ulster's Imperial contribution was no less than £237,237,344, and after deducting payments to Ulster from the British Exchequer for various purposes the net Imperial contribution was no less than £195 million.

M. Chérioux rightly gives in his Bibliography the Commentary of Sir Arthur Quekett on the Constitution of Northern Ireland; but he does not seem to have consulted it with sufficient care, otherwise he would never have said that the Members of the Government of Northern Ireland can only sit in the House (*i.e.*, either the Commons or the Senate) of which they are members. As a matter of fact it is one of the great advantages of the Ulster Constitution that a Minister can speak in either House. The Marquess of Londonderry was able to introduce his famous Education Bill to the House of Commons, of which he was not a member.

It is deplorable that a work of this kind, which might have been a serious study, was not submitted to some Irishman, either from the North or the South, who could have eliminated some of these gross errors, several of which I have no space to mention.

D. L. SAVORY

(Professor Savory is the Member of Parliament for Antrim South. He was for more than thirty years Professor of French Language and Romance Philology at Queen's University, Belfast, and represented the University for ten years at Westminster.)

The Dominion of Ceylon. By Sir Frederick Rees. University of Nottingham. 1s. 6d. (The twenty-second Cust Foundation Lecture.)

The Constitution of Ceylon. By Sir Ivor Jennings. Oxford University Press. 16s.

Ceylon has known many invaders in her history and each has contributed something to the variety and richness of the civilization of the island. From India came the Hindu and Buddhist religious and social systems; from Portugal came Roman Catholic Christianity; from Holland came Roman-Dutch law and a diligent attitude to trade and administration; from Britain came the institution of parliamentary government.

After the British conquest in 1796 Ceylon was administered by the East India Company as a dependency of Madras. In 1798 this arrangement was modified and the island was administered jointly by the East India Company and the Imperial Government. Then in 1802 dual control was ended and Ceylon became a Crown Colony, a status which lasted until the island became an independent state within the Commonwealth in 1948.

Until 1833 all executive, legislative, and judicial authority was vested in the Governor who had a council of senior officials of his own choosing to advise him, though he was not bound by the advice he received. This system was strongly condemned by Colonel Colebrooke, who headed the Commission which began its investigation of the administration of Ceylon in 1829. Colebrooke recommended that the advisory council should become an Executive Council, and that a Legislative Council should be created. He advocated the novel principle that membership of the legislature should not be confined to public officials but should include "any respectable inhabitants, European or Native". He maintained that "the people are entitled to expect that their interests and wishes may be attended to, and their rights protected".

Such views did not commend themselves to the British officials in Ceylon; and it is one of the ironies of history that Sir Robert Wilmot-Horton, who in 1823 as Under-Secretary

for War and the Colonies had persuaded the House of Commons to approve the sending of the Colebrooke Commission to Ceylon, was now Governor of Ceylon and was complaining to the Colonial Office in London of Colebrooke's "crude and impractical" proposals. He was supported in his views by his predecessor as Governor, Sir Edward Barnes, who held that "black faces and white can never be so amalgamated together in society as to be on an equal footing". Barnes objected to ordinary people, whether European or native, having any share in the government of the island on the ground that "such a form of Government must lead to discussion and I hold it to be a maxim of government that the executive authority should never be engaged in personal discussions".

In spite of these misgivings in high places, Colebrooke's proposals were put into effect in 1833. An Executive Council, consisting of five officials, was created: this body remained entirely official in character until after the first world war when three unofficial members were added. A Legislative Council was created, consisting initially of the Governor and nine officials. This form of legislature was maintained for ninety years, though unofficial nominees of the Governor were added from time to time. In 1920, for the first time, the unofficial members—of whom half were nominated by the Governor—outnumbered the officials, and in 1923 the principle of election was extended so as to give the elected members a small majority.

In 1931 this orthodox form of government was abandoned. In accordance with the recommendations of a Commission of Enquiry (the Donoughmore Commission), a novel constitution was introduced, modelled—it is often said—on the system of English county government. In the place of Executive and Legislative Councils a new and substantially elective body was created known as the State Council. This body combined executive and legislative functions. It was divided into a number of committees each responsible for some function of government: the chairman of each committee was in effect a Minister in charge of a department, and the chairmen meeting together acted as a cabinet. This bold and

interesting experiment in colonial government was not a success, and following the visit to Ceylon in 1944-5 of another Commission of Enquiry (the Soulbury Commission), Ceylon returned to a more orthodox constitution.

The Soulbury Commission had three members. The Chairman, Lord Soulbury, is now Governor-General of Ceylon. Mr. F. J. (now Sir Frederick) Burrows subsequently became Governor of Bengal. He was formerly President of the National Union of Railwaymen and it is said that when a distinguished army officer once asked him if he had done any hunting and shooting at home, he said he had spent more time shunting and hooting. The third member of the Soulbury Commission, Mr. J. F. (now Sir Frederick) Rees, Principal of the University College of South Wales, delivered the twenty-second Cust Foundation Lecture at the University of Nottingham in May, 1949. He chose as his subject "The Dominion of Ceylon", and the lecture has now been published in expanded form. It is a useful survey of recent constitutional developments in Ceylon although the treatment of the early nineteenth century period is a trifle perfunctory and in some respects inaccurate. It is stated, for example, that from "1796 to 1802 the administration was exercised by the East India Company from Madras": in fact this arrangement ended in 1798, and until 1802 Ceylon was administered jointly by the Crown and the East India Company. The statement that "the chiefs, who had differences with their king, ceded the Kandyan Provinces to the British Crown by the Convention of 1815" gives a misleading impression of what happened. The king had indeed become estranged from some members of the Kandyan nobility, but the events of 1815 were precipitated by a barbarous attack on some British subjects. The Governor decided to invade Kandy, but no resistance was offered and the chiefs agreed to the cession of territory. Two years later, however, Kandy was in revolt and the territory was only conquered "after severe British losses had been incurred and the Kandyan had been treated with a severity difficult to justify" (Report of the Donoughmore Commission, 1928).

Sir Ivor Jennings, Vice-Chancellor of the University of Ceylon, acted as unofficial adviser to two leading Ceylonese politicians, the Rt. Hon. D. S. Senanayake and Sir Oliver Goonetilleke, who were responsible for the negotiations which preceded Ceylon's attainment of independence within the Commonwealth. Mr. Senanayake became the first Prime Minister of independent Ceylon, and Sir Oliver is Ceylon's High Commissioner in London.

Sir Ivor has written an excellent analysis of the present Constitution of Ceylon and has described briefly the events which led up to its adoption. The manuscript was completed in 1947 and revised early in 1948, but unfortunately its publication did not take place until 1950. The delay has meant that certain passages, such as those dealing with the constitutional position of Eire (p. 27 *et seq.*) and citizenship and nationality in the Commonwealth (p. 31), have been outdated by events. Sir Ivor remarks in his preface that "the history of the negotiations [for independence] has been written and will, I hope, be published at a suitable opportunity". All who are interested in constitutional matters will await the publication of this history with keen anticipation.

Ceylon today enjoys a parliamentary system deriving from the Westminster pattern. The lower house consists mainly of members elected for territorial constituencies by majority voting: the upper house consists equally of members elected by the lower house by proportional representation and members chosen by the Governor-General. The cabinet is responsible to the lower house. The present Government is a coalition of parties and persons ranging from moderate socialist to progressive conservative, and the opposition consists almost entirely of three rival Communist parties.

The constitutional structure is described by Sir Ivor, who supplements the facts with shrewd comments and observations of his own. More than half the book is taken up with constitutional documents, the more obscure passages being explained. Sir Ivor does not conceal his dislike of the Donoughmore Constitution, and he takes a fatherly interest in the new Constitution which he did so much to mould. He is oddly

obsessed with Sir William Harcourt, ascribing to him Tierney's dictum that it is the duty of an opposition to oppose and Lord Morley's description of the Prime Minister as the keystone of the Cabinet arch.

SYDNEY D. BAILEY.

Introduction to Indian Administration. By M. R. Palande. Fourth edition. Oxford University Press. 3s. 6d.

Primer of Indian Administration and the British Constitution. By M. R. Palande. Seventh edition. Oxford University Press. 1s. 6d.

India, Pakistan, and the West. By Percival Spear. Oxford University Press. 5s.

India. By C. H. Philips. Hutchinson. 7s. 6d.

The contents of all the four volumes under review, particularly the two by Professor Palande, have been out-dated by the revolutionary changes that have taken place on the sub-continent of India since August, 1947, and the birth of the Dominion of Pakistan and the Republic of India, though Dr. Spear and Dr. Philips have tried to catch up with the events. Professor Palande's *Introduction to Indian Administration* gives a readable account of the administrative structure and the functions of different organs of government under the Government of India Act, 1935. After a short account of Indian constitutional development, the volume goes on to deal with the structure and functions of the Home Government for India. There is an interesting section on the different forms of control exercised by Parliament from time to time over Indian administration. There are then sections on the structure and functions of the central government in India and the Provinces under the 1935 Act. The volume is a good text-book on the subject and useful also to the general reader. The *Primer of Indian Administration and the British Constitution* by the same author gives a simple and elementary description of the constitutional structure of the Governments of India, before the introduction of the present Constitution, and the British Constitution.

Dr. Spear's volume is No. 211 in the Home University Library. It is written in a very lucid and readable style and the author shows a complete grasp, if not always an understanding, of the complex problems of India and Pakistan. He gives a fairly full analytical description of the country—which he calls “a land of problems”—and then goes on to give a quick bird's-eye-view of her history down the ages. He narrates how the British discharged the great task of the establishment of order and the organization of law in the anarchy that had resulted after the breakdown of the Mughal central authority, by organized police, a legal system and a judiciary, a system of land tenure, a loyal army, and a subordinate Princely Order to rule two-fifths of the country as imperial agents. There is then a penetrating analysis of the economic system which the British evolved for India and the various forces which moulded it.

Dr. Spear states that, while in the sphere of politics the British deliberately constituted a positive system of power and in the realm of welfare introduced Western concepts and practices—while, of course, being scrupulous in not attacking, at least overtly, Indian institutions—in the field of economic life they did not conceive of any fixed system, nor had they any ideas to guide them. Unfortunately, the British Government both in the United Kingdom and India did not, and perhaps could not, appreciate that what was good for the United Kingdom was not necessarily good for India, which was in so many respects different from the mother country. The result was that “the same liberty which had proved the secret of British industrial prosperity had converted India into a colonial economy”. Dr. Spear continues: “What has been condemned as deliberate British policy was in fact the normal working of current economic ideas and inevitable British economic pressure. But its effect on the Indian mind was the same as if the motive had been calculated egotism. It fostered a sense of dependence and of frustration and provided the key argument for a belief in the British exploitation of India. What was a plan to have no plan appeared in Indian eyes to be a regular design to retard the country's progress.”

In the sphere of social welfare interference was inevitable.

This was a mixed blessing to Indians, for while it put an end to such cruel social practices as *Sati* and female infanticide, the system of education as propounded by Macaulay threatened the very foundations of Indian intellectual and religious structure established ages ago. This brought to the fore the vital question: "What was to be India's attitude to the Western cultural invasion? Should it be accepted, rejected, or absorbed and synthesized?"

Dr. Spear analyzes the implications of this question in an illuminating chapter entitled "The Indian Response". He takes the view that the whole of modern Indian development is an ordered series of responses to a set of challenges presented by Western civilization. While this kind of interpretation may not explain every modern development in India, it no doubt contains a large measure of truth. The first response was military because it was through military power that the British conquered India. The next one was conservative, the supreme expression of which was the Mutiny. The third response was that of acceptance of Western ideas. Between the two extremes of conservatism and acceptance there was the orthodox response—the attempt to discover the secret of new life in India's own ancient heritage. Finally, there was the synthesis of the two cultures, Western and Indian, the work mainly of Raja Ram Mohan Roy and Sir Syed Ahmed Khan. Whether or not this synthesis is "the working faith of modern India" as the author opines, this solution emphasized that not all Western ideas were harmful to Indian culture.

Will this synthesis endure? The author examines how far certain features of Hinduism and Islam are consistent with Western conceptions, and he concludes that it is much easier for Islam than for Hinduism to accept and adapt itself to Western thought. Whether or not one agrees with the author's analysis of the problems of modern India, this is a highly thought-provoking volume and a worthy addition to the Home University Library.

The volume by Dr. Philips is in Hutchinson's University Library whose aim is stated to be "to provide popular yet scholarly introductions for the benefit of the general reader."

The volume covers more or less the same ground as Dr. Spear's, though it is more descriptive than analytical. Dr. Philips, unlike Dr. Spear, does not try to be objective and impartial. This has led him to such conclusions as, for instance: "The East India Company was certainly the strongest government that had ever ruled India; equally, though this has not always been appreciated, it was the most enlightened." Surely this is a sweeping statement and factually incorrect as there did exist strong and enlightened governments during India's previous history.

On page 17 of the volume there are two typographical errors. The name of the goddess of wealth is stated to be Nakshim instead of Lakshmi, and the name of the god of rain is given as Rudra instead of Indra.

M. S. RAJAN

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Revista Española de Seguridad Social. Instituto Nacional de Prevision.

Entre Hendaia y Gibraltar. By Ramón Serrano Suñer. Ediciones y Publicaciones Españolas, S.A.

El Liberalismo Doctrinario. By Luis Diez del Corral. Instituto de Estudios Politicos.

Por qué cayó Alfonso XIII. By Duque de Maura y Melchor Fernández Almagro. Ediciones Ambos Mundos.

"If I were asked to scrap everything but one in our parliamentary system"—a British politician said once to me—"I should retain *Question Time*". This saying kept creeping back into my memory as I read the four publications listed at the head of this review. The *Revista Española de Seguridad Social* is a publication of the *Instituto Nacional de Prevision*, one of the public, yet autonomous, institutions created by the monarchy in its most enlightened phase, which, unlike other less fortunate ones, has weathered the political storms of present day Spain. Apart from a number of items of concrete information, it prints three competent articles, one in particular, by that veteran Catholic authority Professor Severino Aznar. The review and its sponsor are a good reminder of the considerable amount of legislation

devoted by the present regime to social security; but it is here that our British parliamentary friend's dictum comes in: what does actually happen behind this legislation in the absence of the indiscreet questions M.P.s are apt to put?

Needless to say the same applies to foreign affairs, as the next item on the list suggests. Señor Serrano Suñer, General Franco's brother-in-law, was the Caudillo's Home Secretary before he became his Foreign Secretary; and in both his functions he left the reputation of a fox who fancied himself a lion. The book is not written for the sake of scientific history. Its aim is twofold: to prove that General Franco's foreign policy was excellent while Sr. Serrano Suñer was in charge of it, but not before or after; and to disprove that Sr. Serrano Suñer was pro-nazi or pro-fascist. It fails on both counts. The Falangist Foreign Secretary was by no means always wrong or always inept; far from it; but the foreign policy of a responsible country should never be delivered into the hands of one or two men. Question Time, again. A parliamentary system that gets out of hand may, to be sure, do much harm in foreign affairs; but the golden rule in these matters should be: *public strategy and private tactics*.

Item 3, is without doubt the most distinguished of the list from the international point of view. It seems to have been conceived as a study of "doctrinarian" liberalism in Spain; but in the process of its gestation the author became more and more immersed into the French origins of his subject; so that, in the end, a book of 600 pages came to be written out of which 400 are devoted to Royer-Collard and Guizot and only 200 to Donoso Cortés, Alcalá Galiano and Cánovas. It is an excellent study of a period of European political thought not as well studied as it deserves. The author is well qualified by both his historical and his philosophical background to deal with the issues raised; and his personal standpoint seems to be both well balanced and discreetly held. The problem which Royer-Collard and Guizot had to tackle in 1814 and in 1830 was chiefly how to ally the traditional force of the eighteenth century monarchy with the progressive requirements of the nineteenth century: the two trends had to be blended in a

consistent political philosophy; and they had to be balanced in a relatively peaceful day-to-day policy. The author skilfully describes the two processes in their European setting, under the influence of German theory and of British practice.

The wave of revolutions which swept over Europe in 1848 put an end to that phase in France; but in Spain events similar to those of 1830 took place in 1875, and the Guizot of Alfonso XII was Cánovas. The author's portrait of Cánovas is as well balanced as those he draws of his French predecessors, if somewhat hastier. This supreme architect of the Spanish Restoration, the resolute head of a Conservative party, was nevertheless a thoroughly liberal and parliamentary spirit, a "doctrinarian" in the best historical sense of the word.

This means, among other things, that Cánovas was no readier than Royer-Collard and Guizot had been to admit that sovereignty could reside in the people. For Cánovas, *both* the Cortes and the King represented the nation, and thus the monarchy was for him an *essential* part of the country.

It is here that the last book in the list comes in; for it seeks to describe why the monarchy fell in 1931. Fundamentally the book is the work of the Duke of Maura, who sought the collaboration of his colleague to guard against possible bias on his part since one of the main characters in the story is his own father, Don Antonio Maura. Cánovas was also "Don Antonio", the "Don Antonio" of Alfonso XII, as Maura was *the* "Don Antonio" of the reign of Alfonso XIII. And, like Cánovas, Maura also was a doctrinarian in every, and not only in the best, sense of the word. His son has written a book full of interest for the Spaniard; marred for the outsider by too much minute anecdote. Taken in conjunction with the preceding work, the two form a complete study of the theory and practice of parliamentarianism in Spain and both confirm what we already knew; that, though not altogether blameless, it was not the King who was most to blame if that interesting experiment failed in Spain.

SALVADOR DE MADARIAGA

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PARLIAMENTARY AFFAIRS

THE JOURNAL OF THE HANSARD SOCIETY

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HANSARD SOCIETY NEWS

by STEPHEN KING-HALL

(Chairman of the Council and Honorary Director)

THE most important development in the history of the Hansard Society which it is my duty to report to the members is concerned with the Consultative Assembly of the Council of Europe. On 23rd May, 1949, a few days after the signature at St. James's Palace of the Statute of the Council of Europe, a resolution was passed by the Council of the Hansard Society to the effect that although the Consultative Assembly was not a Parliament in the strict sense of the word, it was a democratic parliamentary institution and as such its activities came within the scope of the work of the Society. The first session of the Consultative Assembly took place in August and September, 1949, but it was not until the summer of 1950 that full reports of its proceedings were available. It is evident that the interest of public opinion in this new experiment in democratic international co-operation at the parliamentary level is handicapped when so long an interval elapses between the meetings of the Assembly and the appearance of a printed report of its proceedings.

This problem engaged the attention of the Secretariat-General of the Council of Europe, and it was decided in Strasbourg that for the 1950 session there would be produced by the Secretariat a daily "extended summary" of the proceedings. At the moment of writing (July, 1950) it is anticipated that this official summary may amount to about 5,000 words per day. It will not be verbatim, but it will provide an interim source of information pending the final production of the complete and definitive report of the proceedings which must inevitably take several months to produce. Having decided upon this step, the Secretariat-General invited me to visit Strasbourg where I was asked whether the Hansard Society would undertake to publish in English a weekly edition of this extended summary. Subject to certain financial

provisions which limit the risk falling upon the Hansard Society, the Council decided to accept this invitation which they felt is both an important opportunity to promote the objects of the Society and was also a pleasing testimonial to the standing and status of the Hansard Society. Moreover, it provides the Society with excellent opportunities of making our work known in all parts of the English-speaking world. The name of the new publication, of which it is anticipated there will be four issues at 1/- each during 1950, is *European Assembly*. It is intended to publish the four issues in book form at an early date.

It is impossible to foresee how the connection between the Council of Europe and the Hansard Society will develop, but it has great possibilities for the future. It would seem that the trend of events is moving towards closer international co-operation between democratic nations and that this tendency will inevitably mean closer co-operation between parliamentary institutions and the electors. One of the problems which is to be discerned on the horizon of time is concerned with the question of how the parliamentary system—in one form or another—can be extended to the international field. If, for example, it was decided to create a European Parliament, what would be its electorate? How would candidates be nominated? What would be its procedure? The Council of the Hansard Society wish to set up study groups to investigate this and similar problems. The most eminent persons at home and abroad are willing to work for us but we cannot get going until we can afford to pay salaries to a secretariat. I estimate it would cost £500 per study group, of which some or all of this expenditure would be recovered by the sale of the report. We have appealed for £500 in order to inaugurate a study group to investigate "The problems involved in the extension of the parliamentary system to the international field", but so far in vain. But we have always lived with hope and faith as our principal capital assets in the Hansard Society and so far they have paid dividends.

* * * * *

It is the intention of the Council to hold at least one Youth

Conference in the provinces during the autumn on the lines of the successful conferences held in London. The place chosen for the first conference is Bristol and the provisional date is 27th October.

* * * * *

In May the Assistant Director of the Society visited Bonn, the federal capital of Western Germany, at the invitation of some of the German parliamentarians who had visited this country under the auspices of the Hansard Society. The object of the visit was to hear news of developments which were taking place in connection with a proposed German parliamentary society. Various rather complicated and lengthy negotiations were—and we understand still are—taking place, and as we go to press there is no news that the plans of the German sponsors have borne fruit.

* * * * *

I mentioned in my last report the two new pamphlets *Questions on Parliament* and *Answers to Questions on Parliament* by K. Gibberd. There has been a steady demand for these from schools and other institutions, but we have still not heard of anyone who, with the help of books but without the use of the “crib”, has been able to answer ninety-five of the hundred questions correctly. The two pamphlets cost 6d. each (4d. to members of the Society).

The four papers on the Constitutions of the British Colonies which have appeared in earlier issues of *Parliamentary Affairs* were intended mainly for reference purposes. It was suggested to us that the papers should be brought up to date and reprinted in pamphlet form. This has been done and the pamphlet is now ready. It costs 2s. 6d. (1s. 8d. to members).

New readers of *Parliamentary Affairs* may not be aware that last December we published a special enlarged issue of 300 pages devoted entirely to the American system of government. Although we printed 5,000 copies of this issue, our stock is now down to less than 200 and there is still a steady demand for copies. We have, therefore, decided to reprint twenty of the articles in book form. The book is to be called *Aspects of American Government* and will consist of 208 pages. It will be

ready about the middle of October and will cost 6s. (4s. to members). Anyone who cannot wait until October should write in quickly for one of the few copies of the American issue of *Parliamentary Affairs* that we still have for sale.

We shall be publishing on 26th October (to coincide with the opening of the new House of Commons Chamber) a pamphlet called *The House of Commons in Debate* by J. D. Lambert, B.A., B.Litt. This pamphlet contains four illustrations, a plan of the Palace of Westminster, and a plan of the new Commons' Chamber, and it has been produced specially for those fortunate few who manage to get into the galleries of the House while the House is sitting. The price is 1s. (8d. to members).

From time to time during the past three years I have announced the imminent publication of *The Parliament of France* by D. W. S. Lidderdale. I can now definitely state that the proofs have been passed and that the book will be ready in the autumn. The French Government have already placed an advance order for 750 copies. I expect the price will be 12s. 6d.

This issue of *Parliamentary Affairs* completes the third volume, and an index for the complete volume III is now available and costs 1s. We shall have a few bound volumes of Volume III ready in about a month's time: it comprises 608 pages of text and includes 12 illustrations: the price is 15s.

Japanese and Italian editions of Strathearn Gordon's *Our Parliament* have now been published. The Japanese edition is published by Messrs. Sanmei-sha, Tokyo: the Italian edition is published by Arnoldo Mondadori.

* * * * *

Would members of the Hansard Society please note that our sixth Annual General Meeting will take place on 16th November, 1950. The Lord Chancellor, Viscount Jowitt, has promised to speak on this occasion. An Annual Report and an Agenda for the meeting will, of course, be sent to members before the meeting takes place.

CHAPTER SIX, VI, vi, 6 or 6?

THE CLASSIFICATION AND RECORDING OF ACTS

by R. W. PERCEVAL
(*A Clerk in the House of Lords.*)

ANYONE who has poked about among Acts of Parliament will know how confusing are the various systems of numbering and classifying them that have been adopted from time to time. The official public system is bad enough, as we shall see, but in addition to that there is the quite different system used in the Rolls of Parliament and the peculiar, private and baffling system used in the Victoria Tower where the original Acts are kept. The latter goes back at least four centuries, the former even more.

But let us confine ourselves to the public system, that by which an Act is numbered (say) 9 & 10 Geo 6. c. 15. Why on earth should it be done like that? A few days' perilous research, done on top of a ladder amid eddies of school-children waiting to see Charles I's death warrant, has provided me with some part of the answer to that question, which I have put into an article and a Table in the hope that it may be of use or interest to others.

The present system of numbering Acts of Parliament, by what is called "regnal year and chapter number", is as follows:

Public General Acts—25 & 26 Geo. 5. c. 10

Local Acts—26 Geo. 5 & 1 Edw. 8., c. xi

Personal Acts—1 Edw. 8 & 1 Geo. 6, c. 12

Church Assembly Measures—1 & 2 Geo. 6, No. 13

The Church Assembly Measures, of course, date only from 1919; when they first began, there was some little dispute about whether they should be included in the annual volume of Public General Acts; but eventually it was decided to include them, and to number them on the analogy of the Acts. It is

into the origin and history of this system of numbering the Acts that we must now delve.

Before Parliament existed, the King occasionally issued the text of articles which had been agreed between himself and his council or barons. The Constitutions of Clarendon (1162) and Magna Carta (1215) are examples of such texts. They contained a number of articles and dealt with a variety of subjects; and they were binding upon the whole realm—that is to say, they were laws. During the thirteenth century, it became customary to call laws of this type Statutes. Thus we have the Statute of Merton (1235) and the Statute of Marlborough (1267), and in the time of Edward I the Statutes of Westminster I, Gloucester, Rhuddlan, Westminster II, and Winchester. Some of these latter were made in Parliament, and some not. But they all had a number of articles—in one case as many as fifty—and each article dealt with a different subject—obscure subjects like *beaupleader*, *essoins*, and *replevins*, and simple ones like the abduction of nuns and the width of streets.

When Parliament came to be the normal instrument for making changes in the law—let us say in the first quarter of the fourteenth century—it became the practice to issue, at the end of each Parliament, a Statute containing all the decisions of that Parliament which were to be of permanent and general effect. The Statute was edited from the proceedings of the Parliament by a committee of judges, Chancery clerks and councillors; it was divided into chapters and it did not include any reference to private petitions or to the administrative acts of the Parliament, such as the grant of supply or the ventilation of grievances—unless a remedial change in the law was agreed upon. In those days the system of reckoning dates *Anno Domini* was not in use; a man referred to “the tenth year of Our Lord the King Edward, the Third of that name after the Conquest.” And a lawyer, wishing briefly to note a part of a law, would write down “X Edw III, cap. iv.” So might a lawyer write of any enactment until 1900; the modern use is very slightly different—“10 Edw 3, c. 4.” Both these formulae are

contractions of "the fourth chapter of the Statute passed in the Parliament holden in the tenth year of our Lord the King Edward, the Third after the Conquest."

All the Statutes passed between 1278 and (probably) 1489 were entered on the Statute Roll, which still exists (except for the Roll covering the years 1465 to 1489) in the Public Record Office. From 1483 until the present day, a printed Volume of Statutes has been issued for every year or Session of Parliament; this must, I suppose, be easily the longest set or series of books in existence. The Parliament Rolls, containing the text of all Public Acts, continued to be written out by hand and sent to the Public Record Office by the Clerk of the Parliaments till 1850; since then printed vellum copies of the Acts have been sent instead. The Statute Roll (with one or two exceptions) contains nothing but Public General Acts; Private Acts could be enrolled on the Parliament Roll if the promoter so wished (and paid the fee); otherwise they were not recorded at all, but simply filed upon the "filace"¹. Such Private Acts received no number and, though no doubt some of them are still valid, they are nowhere recorded as being among the laws of the land. Between 1491 and 1536, however, all the Private Acts are suddenly numbered among the Statutes of each Parliament; thereafter until about 1700 there is a steadily increasing trickle (up to two or three a year) of Local and Private Acts among the Statutes, but the vast majority of them are still unprinted. A numbered list of them has, however, been published each session since 1571; and they began to be officially and regularly printed in 1815. The Table on pages 512-3 tries to show all the various attempts at a satisfactory classification of Acts from 1276 to the present day. None of these classifications (not even the one at present in use) is wholly logical or even sensible; and it is I think worth devoting a paragraph or two to what, from the historical point of view, the proper solution would be.

In the first place, to call any Local, Private or Personal Act CHAPTER *x* is clearly wrong. It does not matter whether you

¹ A sort of bootlace in the Chancery upon which documents were strung—the father of all filing systems.

write the number of the chapter large or small, in roman, arabic, italic, or sanskrit—these Private Acts are not, and never have been, chapters of anything. From about 1420—long before they began in any way to be numbered—they have been Petitions “containing in themselves the form of Acts” which have been affirmatively answered by the Crown after passing both Houses. Each has always been a totally distinct and separate entity; none has ever formed part (as Public Acts once did) of an integral Statute edited by a few judges and clerks at the end of a Parliament from materials that had been through Parliament. Private Acts, therefore, ought in theory to be numbered, not chaptered; but this is clearly not a point of much importance.

Next, we must consider something much more difficult—the difference between Public and Private Acts. In the Middle Ages there was no such distinction; but corresponding to it there was a distinction between Statutes (that is, permanent changes in the law of England) and Acts that were not Statutes (that is Supply Acts, Acts of Attainder, etc., and Private Acts whether enrolled or not). The Tudor period was one of some confusion; in Henry VIII’s time *all* Acts were counted among the Statutes; in Mary’s time some Acts which we should call private were put among the Statutes (e.g., 2 & 3 P & M c XIV, enabling the Dean & Chapter of Hereford to build mills) and some which we should call public were not (e.g., an Act of 1554 declaring the supposed Attainder of the Duke of Norfolk to be void).

By the time of Elizabeth, and increasingly as the seventeenth century wore on, things were beginning to settle down upon the following principle. Where any Private Act creates an offence against the law, or imposes any sort of toll, charge or fee, or fine or other penalty, clearly the Courts of Law must have cognizance of it. But the Courts only know (1) the law, and (2) what is proved to them by evidence. Now a Statute is part of the Law, and therefore known by the Courts; and so in the seventeenth century certain Private Acts began to contain a clause saying that “this Act shall be deemed and taken to be a Publick Act, and shall be judicially taken notice

of as such by all judges, justices and others, without being specially pleaded". In other words, these Private Acts became Statutes, were printed as such, were treated in the Courts as such, and were chaptered at first among, later after, the Public General Acts of the session.

Round about 1800 a determined attempt was made by both Houses to clear up this rather chaotic position. It was decreed that Public Acts should be chaptered and printed in one volume; that Private Acts declared Public should be in another; and that there should be a third category, of Private Acts not declared Public, but printed (at the promoters' expense, of course) by the King's Printer, and of which the printed copies were to be admissible in evidence. At the tail of the procession was a poor little straggle of unprinted Private Acts, which had to be proved in a Court of Law by the production of a certificate from the Clerk of the Parliaments, and which got no recognition but a number. And so the situation was, if anything, even more chaotic than before.

But in 1850 came an Act of Lord Brougham's, the forerunner of the Interpretation Act. Among other things, it laid down that any Act was Public unless it said it wasn't; and this should have cleared things up a good bit. Acts now should have been classified simply as Public or Private, as Bills have always been, depending on whether they were general or particular in their application. The Private could have been sub-divided into Local, Personal, etc.; and all Bills originating on the petition of a body or person outside Parliament (i.e. all Private Bills) should have received the Royal Assent, as they did of old, in the form "*Soit fait come il est désiré*", leaving to Public Bills alone the formula "*Le Roy le veult*".

Unfortunately this did not happen. In the printed volumes, the changes have been awkwardly rung on the three descriptions "Local", "Private" and "Personal"; and Provisional Order Confirmation Acts have consistently received the misleading description "Public Acts of a Local Character". Moreover, since 1850 there have been five different methods of numbering the Private Acts; and the Royal Assent formula "*Soit fait come il est désiré*" has been limited to those Acts which

declared that they were not Public. This has been a rapidly decreasing class; divorce, naturalization, patent, restitution and name Bills have all become obsolete since Edwardian times or earlier; and among what are now called "Personal Bills" there are virtually only left Estate Bills; and these are rare. (There have been only three since the end of the war.) But since the words "*Soit fait come il est d siré*" are properly the answer to a petition, and since all Private Bills originate on petition, it does seem that, now that the little difficulty over cognizance by the Law Courts has been cleared up, we should revert to the ancient practice of giving the Royal Assent to all Private Bills in the form "*Soit fait come il est désiré*", leaving "*Le Roy le veult*" for Public Bills properly so-called. After all, "*Le Roy le veult*" means, I suppose, "It is the King's will", and the King and his Government can hardly be supposed to be much concerned or interested in the average Bill promoted by a small local authority.

All this shows that parliamentary custom is worse than an iceberg—ninety-nine hundredths of it lie below the surface. Even so trivial a piece of it as the two words "chapter six" in the citation of an Act cannot be understood without diving into the centuries and exploring all sorts of crusty old matters that have stood there in the gloom for ages.

We might perhaps end on a legal note. Section 35 of the Interpretation Act, 1889, lays down that the chapter number of an Act shall be that given in the Statutes Revised, and, failing that, the number given in the Record Commission edition of Statutes of the Realm (which was published, in nine vast, beautiful and scholarly volumes, between 1810 and 1822, and included Acts passed down to 1713) and failing that, the number given in the King's Printer's copies or volumes. The numbers given by the Tables in the annual volumes before 1714, therefore, although contemporary and more complete than numbers given by other authorities, are not legally authentic. Neither, of course, are the numbers given in such private collections of Statutes as Dutton's, Tomlin's or Ruffhead's, although these, too, may include Acts which are not in the official collection. But the law insists that, in law, only the official editions are correct.

CLASSIFICATION OF ACTS

YEAR	PUBLIC		PRIVATE		Originals
			Record		
1276-1465	Statute Rolls (? to 1489) Supply and other ephemeral Public Acts on Parliament Roll only.		Some enrolled on Parliament Roll for a fee.		All on the file, survivors in Public Record Office.
1483-1489	Printed Sessional Volume of Statutes taken from Statute Roll, cc I-IX.		Some enrolled on Parliament Roll for a fee. None printed.		" " "
1491-1536	Printed Sessional Volume of Statutes taken from engrossed Acts including all enrolled Private Acts, cc. I-IX.		" " "		All in Victoria Tower.
1539-1570	Printed Sessional Volume of Statutes, including only Public General and Public Local Acts, cc. I-IX.		" " "		"
1571-1640	" " " " "		List of Private Acts in sessional volume, numbered 1-9. Some enrolled on Parliament Roll till 1593. None printed.		" " "
1641-1752	Sessional Volumes, printed from pamphlet type but with numbered pages, of "Public General Acts" and "Local and Personal Acts declared Public" in one series indiscriminately; cc. I-IX. [See Note I]		List of Private Acts numbered 1-9. None printed except privately (from 1660) and unnumbered. Parliament Roll gives Titles only of "private Acts" till 1757, then drops them.		" " "
1753-1797	Ditto, but Public Acts in Volume I (cc. I-IX), "Local and Personal declared Public" in Volume II (cc. IX-XL).		Listed in sessional volume and numbered 1-9. Separate private prints unnumbered.		" " "
1798-1802	Public Sessional Volumes as above (cc. I-IX), "Local and Personal declared Public" in separate volume, cc. 1-9.		" " "		" " "
1803-1814	Public as above. Local and Personal declared Public Local and Personal to be judicially noticed } cc. 1-9.		" " "		" " "

1815-1868	Public as above (including Provisional Orders). Local and Personal declared Public in one volume, cc. i-ix. [See Note 2]	Private printed (at parties' expense by King's Printer) the printed copies of which may be given in evidence. Private unprinted.	One series 1-9	All in Victoria Tower. (Vellums from 1850)
1869-1875	Public (excluding Provisional Orders) as above, cc. 1-9. Local Acts* (including Provisional Orders, which henceforth are noted as "Public Acts of a Local character") cc. i-ix. ["Local and Private" in 1869 only.]	*Private printed as above *Private unprinted [*Private henceforth in effect = personal]	One series 1-9	" "
1876-1922	Public as above.	Local as above Private printed as above and numbered 1-9	One volume*	" "
1923-1947	" " "	Private unprinted and unnumbered listed in this volume.* Last one 1923. [See Note 3]	" "	" "
1948 onwards	" " "	Local as above Private (if any) as above	One volume	" "
	" " "	Local as above Personal (if any) as private above	One volume	" "

NOTES: From at least 1714 to 1889 the heading of the printed Tables was "All the Statutes, Public and Private, passed in the Session etc." Since then it has been "Table of Public General Acts", and "Table of Local and Private Acts" ("Local and Personal" since 1948).

1. Text of all Public Acts in Parliament Roll till 1850, since when printed Vellums have been substituted.
2. An Act of 1850 provided that all Acts henceforth shall be deemed and taken to be Public Acts, unless the contrary be expressly provided and declared. 13 & 14 Vict. c. 21, s. 7.
3. Estate Acts have all been printed since the reign of George IV. The last unprinted divorce Act was in 1923. Last name Act 1907, last naturalisation Act 1911, last restoration in blood and honour Act 1885 (E. Mar), last patent Act 1907.

ASPECTS CONSTITUTIONNELS DE LA QUESTION ROYALE EN BELGIQUE

par J. A. TEMMERMAN

Attaché au Greffe du Sénat de Belgique

LA question qui sépare les Belges en deux camps a provoqué de nombreuses discussions où furent traités des points de fait et des points d'ordre constitutionnel. L'auteur de ces lignes a voulu autant que possible écarter les arguments de fait, voire même les considérations sentimentales, qui ont été invoqués au cours de cinq années de polémique. D'autre part, dans son désir de retracer la chronologie de la "Question royale" pour la facilité du lecteur étranger, il s'est borné à citer les différentes thèses de droit constitutionnel en présence.

Le 10 mai 1940, au moment où les forces allemandes déferlent sur la Belgique, le Roi se met à la tête de ses troupes¹ conformément à l'article 68 de la Constitution qui prévoit que le commandement des forces de terre et de mer est assuré par le Roi. La grande majorité² de l'armée belge combat vaillamment contre un ennemi supérieur par le nombre et surtout par le matériel, mais doit reculer sans cesse devant les troupes allemandes; elle effectue son repli dans la direction de la mer. Le 21 mai, les Allemands, après avoir occupé Abbeville sur la Somme, avaient scindé le front allié³; les troupes belges continuent à résister. A l'arrière une divergence de vues s'élève entre les ministres et le Roi sur l'éventualité d'une capitulation. Le 17 mai le Premier Ministre écrit au Roi pour lui faire connaître l'avis unanime des ministres: "Le Roi doit

¹ Proclamation du Roi au peuple belge le 10 mai 1940.

² Seules quelques unités firent défection (Général Van Overstraeten "Les journées dramatiques du 26 au 30 mai 1940".—Général Cornil "Détresse et Espérance".—Ordre du jour du Lieutenant Général Verstraete au VIème Corps d'Armée).

³ Version du Général Van Overstraeten de l'entrevue d'Ypres, le 21 mai 1940. Recueil de documents établi par le Secrétariat du Roi, p. 49.

à tout prix se soustraire à temps au danger d'être fait prisonnier ; quel que soit le cours des événements et tant que les puissances alliées continueront la lutte, le fait de l'existence de la Belgique doit s'affirmer par la conservation et l'activité des organes essentiels de l'Etat"¹.

Le Roi répondit qu'il lui était impossible d'exclure l'hypothèse de lier son sort à celui de l'Armée². Trois jours après cette réponse les ministres ont un dernier entretien avec le Souverain. La situation militaire était désespérée, l'armée belge acculée à la mer allait devoir capituler. Les ministres expriment leur intention de ne pas se laisser faire prisonniers et demandent au Roi de continuer à exercer sa fonction de Chef de l'Etat aux côtés des Gouvernements alliés. Le Roi considéra qu'abandonner son armée serait une désertion et d'autre part que "s'il quittait le pays il n'y rentrerait plus"³. Le Roi demeura avec ses troupes. Les ministres s'embarquèrent pour l'Angleterre ; la question royale était née.

Le premier problème constitutionnel posé peut se résumer en ceci : Le Roi, à la fois Chef d'Etat et Commandant en chef de l'Armée pouvait-il en suivant le sort de ses troupes se mettre dans l'impossibilité d'exercer ses hautes fonctions constitutionnelles ? "En choisissant la condition de prisonnier de guerre, le Roi n'a pas méconnu ses devoirs constitutionnels. Il a adopté la solution qui se recommandait selon Lui du point de vue militaire ; en outre, loin de se soustraire aux devoirs de Sa charge il a voulu se mettre en situation de continuer à les exercer dans la plus large mesure possible, compte tenu des événements du moment," énonce le rapport de la Commission d'information⁴ instituée par le Roi en 1946. "Le point de vue militaire ne pouvait l'emporter sur les points de vue, supérieurs, du respect de la règle constitutionnelle et du maintien de l'Etat dont le pouvoir royal est une des pièces maîtresses,"

¹ Recueil de documents établi par le Secrétariat du Roi, p. 67.

² Recueil de documents établi par le Secrétariat du Roi, p. 69.—Lettre du Roi datée du 22 mai.

³ Compte rendu fait par le Roi de son entrevue avec les ministres le 25 mai 1940. Recueil de documents, p. 99.

⁴ Rapport publié en 1947, p. 71.

rétorque un professeur¹ de l'Université catholique de Louvain, après avoir combattu les arguments avancés par la Commission d'information à l'appui de sa thèse.

D'Angleterre les quatre ministres belges se rendirent dans le Sud de la France où ils retrouvèrent leurs collègues, de nombreux parlementaires, une foule de réfugiés belges et une partie de l'armée. Les sénateurs et députés s'assemblèrent en réunion commune à Limoges et après avoir entendu une déclaration du Gouvernement votèrent une résolution indiquant leur volonté de voir la Belgique poursuivre la lutte aux côtés des Alliés. Conformément à la Constitution² le Conseil des Ministres assumait l'exercice de tous les pouvoirs, en France d'abord, en Grande Bretagne ensuite, jusqu'à la nomination d'un Régent après la libération de la Belgique.

Le Roi, prisonnier de guerre en son Château de Laeken, se maria en 1941. Certains³ virent dans ce mariage une cause de déchéance. En effet, la Constitution⁴ prévoyant la déchéance du prince qui se serait marié sans l'autorisation du Roi, il pourrait paraître en découler que le Roi lui-même devrait obtenir pour son mariage le consentement de ceux qui exercent les pouvoirs royaux à son défaut. Les travaux préparatoires de notre Constitution⁵ et les discussions de 1893 relatives à la revision de la Constitution montrent que les constituants n'ont jamais voulu subordonner le mariage du Roi à une autorisation quelconque.

Il n'en est pas moins vrai que tout acte du Roi doit être revêtu du contre-seing ministériel. Doit-on considérer que les actes privés du Souverain sont également soumis au contre-seing? Le mariage du Roi entraîne en tout cas d'importants effets de droit public. De fait l'acte de mariage de Léopold I, le consentement royal au mariage des Princes Léopold et Albert, ont été contresignés par un ministre.

¹ "Le Problème Constitutionnel de la reddition du Roi" par J. Dabin, Bruxelles 1948.

² Articles 79 et 82.

³ "La question royale et la Constitution" par E. Charles.—Mons et Frameries, 1947.

⁴ Article 60.

⁵ Séances du Congrès national des 8 janvier, 6 et 7 février 1831.

L'omission de cette formalité, suivant M. du Bus de Warnaffe¹ aurait pour conséquence que le mariage du Roi Léopold III n'entraînerait pas d'effets de droit public mais produirait tous ses effets civils. Ainsi, le fils issu de cette union ne pourrait accéder au Trône. M. Fayat estima que les effets politiques du mariage étaient indissolubles des effets civils et demanda qu'une loi mette au point la situation matrimoniale du Roi. Cette suggestion n'eut pas de suite. La question du statut constitutionnel de l'épouse du Roi est encore controversée.

Enfin l'article 16 de notre Constitution stipule que le mariage civil doit précéder le mariage religieux, sauf en cas de danger de mort pour un des futurs époux. Léopold III s'étant marié religieusement le 11 septembre et civilement le 6 décembre 1941² a méconnu cette règle.

Soucieux de l'unité du pays les ministres belges ne manquèrent pas de souligner au cours des allocutions radiodiffusées qu'ils adressèrent à leurs concitoyens, par l'intermédiaire de la B.B.C., que malgré la divergence de vues qui les avait opposés au Roi lors de la capitulation leur but était : une Belgique libre et un Roi libre³. La libération de la Belgique ne concorda pas avec la libération du Roi qui avait été déporté en Allemagne le 6 juin 1944. Par application de l'article 82 de la Constitution, quelques jours après le retour du Gouvernement en Belgique libérée les Chambres élirent le Prince Charles (frère du Roi), Régent de Belgique⁴.

Le Roi libéré⁵ se posa la question de savoir quand il reprendrait sa haute charge. Une partie de la population désirait l'abdication. Des troubles pouvaient éclater dans le pays. Le parti catholique estimait que le Roi devait immédiatement remonter sur le trône, l'impossibilité de régner ayant

¹ Séance de la Chambre des Représentants du 3 février 1950.

² Déclaration faite par le Roi au sujet de son mariage.—Supplément au recueil de documents établi par le secrétariat du Roi, p. 92.

³ Message de MM. Gutt et De Vleeschauwer au peuple belge le 3 octobre 1940. (R.D. p. 467).—Conférence de M. Pierlot à Chatham House le 14 février 1941 (R.D. p. 478).—Discours de M. Pierlot (R.D. p. 521).

⁴ Séance des Chambres réunies le 20 septembre 1944.

⁵ Le 9 mai 1945 par l'armée américaine.

pris fin. Le Gouvernement s'opposa à cette interprétation, et déposa un projet de loi suivant lequel le Roi ne reprendrait l'exercice de ses pouvoirs qu'après une réunion des Chambres réunies constatant que l'impossibilité de régner avait pris fin.

Deux thèses s'affrontèrent: la première prétendit que l'impossibilité ayant été constatée par le Gouvernement c'était aux Chambres, qui ont le pouvoir résiduaire (ce qui n'est pas accordé aux pouvoirs exécutif et judiciaire), de trancher la question: la seconde thèse contestait la constitutionnalité du projet de loi parce que touchant à l'interprétation de la Constitution et par là devant être soumis à une procédure spéciale. Le projet fut finalement adopté¹ et il en résulta que tant que les Chambres réunies n'auraient pas constaté que l'impossibilité de régner a pris fin, le Roi Léopold III ne pourrait remonter sur le trône. L'adoption de cette loi a eu une conséquence, d'ordre secondaire sans doute, mais qui n'en est pas moins très fâcheuse: la formule exécutoire des lois porta jusqu'à ces derniers jours la mention: "Attendu que le Roi est *par le fait de l'ennemi* dans l'impossibilité de régner. . . ."

Les Gouvernements qui se succédèrent après la guerre tentèrent en vain de trouver une solution qui pût satisfaire à la fois partisans et adversaires du Roi. Le parti social-chrétien, le plus important des partis politiques, demandait le retour inconditionnel du Roi; le parti libéral prônait l'effacement de Léopold III; les socialistes, moins nuancés, voulaient son abdication. Les communistes étaient évidemment en faveur de l'abdication. Parlementairement aucun des partis ne pouvait imposer ses vues aux autres; les sociaux-chrétiens avaient la majorité au Sénat, mais étaient en minorité à la Chambre. Un sénateur social-chrétien eut l'idée de déposer une proposition de loi instituant une consultation dans le pays. Le Roi et le Parlement seraient ainsi éclairés sur l'opinion publique.

La proposition de loi ne suscita pas de longs débats au Sénat mais les discussions qui eurent lieu à la Chambre furent longues et animées. La consultation populaire n'était qu'un expédient (terme employé par l'auteur de la proposition lui-

¹ Il devint la loi du 19 juillet 1945.

même) destiné à trancher une question qui se posait depuis trop longtemps, hélas. De nombreux adversaires de la consultation populaire lui reprochaient d'être inconstitutionnelle. En effet, disaient-ils, on ne peut ajouter aux trois organes du pouvoir législatif (Roi, Sénat, Chambre) un nouvel organe qui serait le peuple; d'ailleurs, toutes les propositions de referendum déposées au Parlement ont été rejetées pour cette raison. Les promoteurs de la consultation populaire se défendirent d'avoir voulu un referendum. "Le referendum est la participation directe du peuple à l'oeuvre législative. C'est la Nation elle-même qui dispose d'un pouvoir de décision . . . La consultation populaire n'est qu'un avis demandé au corps électoral. Cet avis n'est qu'un élément d'information¹". D'autres objections de fait furent également formulées mais en fin de compte la proposition fut adoptée. Les résultats de la consultation populaire une fois acquis (57% des votants se prononcèrent en faveur du retour du Roi) de nouvelles difficultés surgirent quant à leur interprétation. Le parti social-chrétien demanda que, le retour du Roi étant désiré par la majorité des électeurs, les Chambres constatent sans tarder que l'impossibilité de régner avait pris fin. Les socialistes qui avaient toujours affirmé que la question était trop importante que pour être tranchée à la simple majorité, mirent à leur tour l'accent sur le fait que les résultats de la consultation populaire n'étaient qu'une information; ils insistèrent aussi sur le danger de scission du pays que le dépouillement régional avait révélé. Les libéraux étaient divisés, quoique la plupart d'entre eux restassent toujours attachés à la solution d'effacement du Roi. La majorité des Belges voulait le retour de Léopold III, mais la minorité était trop importante que pour être négligée. Le Roi le comprit et dans un message d'une grande élévation de pensée suggéra qu'après son retour il délègue temporairement ses pouvoirs à son fils, le prince Baudouin.

Cette suggestion était d'une constitutionnalité peut-être discutable. En Belgique on conçoit difficilement la délégation

¹ Rapport de M. le Représentant Oblin.—Document de la Chambre, n° 122 du 22 décembre 1949.

de pouvoirs. Néanmoins un premier pas était fait vers une solution de concorde nationale et cette solution eût valu un léger accroc à l'esprit de notre Constitution. Le message du Roi fut examiné par les représentants des partis politiques à l'exclusion des communistes.

Les négociations prirent un tour confidentiel et il est difficile de connaître leur déroulement. Il semble qu'elles aient surtout porté sur la résidence du Roi après la délégation de pouvoirs. Les socialistes jugeaient que cette délégation ne serait pas effective si le Roi restait en Belgique car il influencerait les décisions de son fils. Impatienté par la durée des négociations ou peut-être blessé par le manque de confiance à son égard, Léopold III envoya un nouveau message moins conciliant que le premier. Les socialistes, désespérant de se voir accorder les garanties demandées refusèrent de discuter plus longtemps. Les pourparlers entre libéraux et sociaux chrétiens furent rompus quelques jours plus tard et le Prince Régent dut se résigner à dissoudre les Chambres.

Les élections assurèrent au parti social-chrétien la majorité à la Chambre et au Sénat. Les Chambres furent réunies en une assemblée unique pour constater que l'impossibilité de régner avait pris fin. Le 20 juillet les représentants sociaux-chrétiens et un député libéral rappelèrent virtuellement le Roi en Belgique. Les socialistes, les libéraux (sauf un) et les communistes avaient quitté la salle des séances avant le vote.

Le Roi revint le 22 juillet à l'aube au milieu d'un déploiement considérable de forces armées. D'un public peu nombreux partirent à la fois des acclamations et des huées; l'accueil fait au Souverain montre que malgré le retour de celui-ci le pays reste divisé et que, comme le rappela d'ailleurs le Premier Ministre, la "question royale" n'est pas encore résolue.

AVIS EDITORIAL

Le retour du Roi Léopold en Belgique, le 22 Juillet, fut suivi par des démonstrations et des bagarres dans plusieurs parties du pays. Après dix jours, le 11^{er} Août, le Roi (sur le conseil de ses Ministres) demanda que les Chambres passent une loi transférant les prérogatives royales à son fils aîné, le Prince Baudoin, destiné à occuper le trône en atteignant sa 21^{ème} année, le 7 Septembre, 1951. Les Chambres donnèrent effet à cette demande, et le 11 Août 1950, le Prince Baudoin prêta serment d'obéir à la Constitution.

MEMBERS AND THEIR CHAMBER: 1800-1900

by SYDNEY D. BAILEY

On 26th October, 1950, shortly after this issue of Parliamentary Affairs has been published, the new House of Commons Chamber will be opened by His Majesty the King. This Chamber replaces that designed by Barry more than a century ago which was destroyed during a German air attack on London on the night of 10th May, 1941. It was the intention of the editor of Parliamentary Affairs to publish in this issue an article dealing with some of the criticisms which have been levelled by Members of Parliament against their building since 1800. A member of the staff of our Information Department was put on to the job of collecting the references in Hansard with the surprising, and indeed alarming, result from the point of view of a "short article" that over a thousand references on this subject were found covering the period 1800-1900. This left unexplored the half-century 1900-1950 as well as all other sources of material such as speeches in committee or outside the precincts of the Palace, letters to the Press, articles in various publications, books, etc. In the following article the Editor of Parliamentary Affairs has therefore been obliged by the limitations of space to make a somewhat arbitrary selection of aspects of this subject as well as confining himself to the period 1800-1900 and the columns of Hansard. I have written this brief explanatory foreword to this article because one of our reasons for printing it is to indicate to our members and readers that our Information Department can supply (for an appropriate fee for large jobs) a list of references on any subject which has ever been discussed in Parliament—and it is hard to think of one which has not at some time or other, and often many times, been mentioned in debate during the past 150 years.

STEPHEN KING-HALL

THE parliamentary debates of the nineteenth century occupy five hundred volumes of *Hansard*, and each volume contains about a million words. Various topics predominate at different periods—the French Wars, Parlia-

mentary Reform, the Corn Laws, India, the Irish Question, Catholic Emancipation, and so on. But one subject has seemed important to Members at all times, and that is the state of the building in which they perform their parliamentary duties.

The careless reader of this article might conclude from it that this is a matter about which Members are habitually flippant. To anyone who has read the words solemnly uttered by Members on the subject during the nineteenth century, such a suggestion appears monstrous. It is only rarely that the Palace of Westminster has seemed to Members a matter for joking. Occasionally, it is true, one comes across a grotesque suggestion, a stupid intervention, a droll remark, a witty riposte. The pages that follow include quotations of this kind, but it is not suggested that they are necessarily typical.

Aspects of the subject chosen for discussion in this article are the lack of seating accommodation in the Chamber, ventilation, the Ladies' Gallery, the Reporters, catering arrangements, accommodation for the general public, and Barry's design for the buildings which were erected after the fire of 1834. Many matters are omitted because of lack of space. I have not dealt with the Commons' recurrent dispute with their Lordships about dining accommodation, or with Hume's almost single-handed battle to have the Houses of Parliament moved to another part of London, or with the suspicious death of a House of Commons cleaner in 1893, or with the case of the wife of an hon. Member who gave an "At Home" on the Terrace in 1897. I have said nothing about what took place in the shelter for cab drivers in New Palace Yard, or about the Maclise Frescoes in the Queen's Gallery, or about the unusual circumstances under which Mr. Jenkinson obtained access to the Commons' Lobby in 1885. One day, perhaps, these matters will be treated as they deserve.

The bracketed numbers in the text are references to the volumes of *Hansard*: these references are listed at the end of the article. The quotations have been turned into direct speech and the punctuation has been modernized.

* * * * *

Even before the fire of 1834, which destroyed the greater

part of the Palace of Westminster, Members were complaining of the inadequate seating accommodation in the Commons' Chamber. In 1833, for example, Mr. Wolryche Whitmore stated that he had not had a seat during the whole of the session, and Sir Robert Inglis said that Peel, a former Leader of the House, had on more than one occasion found the Front Opposition Bench completely filled by new Members. William Cobbett, a great believer in equality, was on his feet at once: "Whenever I am attending in the House", he said, "and the front bench on either side is not entirely occupied, I will have a seat on one or other of them."⁽¹⁾

The fact that there were more Members than seats was a constant source of annoyance to Back Bench Members, and it was inevitable that a system of seat "reservations" should arise. The usual arrangement was to enter the Chamber as early as possible in the day and place one's hat on the seat one hoped to occupy later, but this was not an infallible arrangement, as Major Stuart Knox discovered in 1866 when the Serjeant at Arms removed all the hats and placed them in a heap in the Lobby.⁽²⁾ Some Members even adopted the dishonourable stratagem of leaving two hats on the benches, if we are to believe Mr. T. E. Headlam⁽³⁾ and Mr. John Simon⁽⁴⁾, and Lord Elcho reported a case in 1869 of three hats left by one Member.⁽⁵⁾

The hat system was not universally liked. Mr. W. R. Cremer, the founder of the Inter-Parliamentary Union, said that "the only persons satisfied with the existing state of things are the occupants of the two Front Benches and the hatters."⁽⁶⁾ Sir J. Goldsmid, on the other hand, exonerated the hatters: "there is a tendency in all men to be selfish; and as hon. and right hon. Gentlemen of the two Front Benches are always sure of their seats, they are unable to sympathize in any way with private Members."⁽⁷⁾

An unforeseen consequence of the hat system was brought to the notice of the House during the influenza epidemic of 1895 by Mr. Cremer. He alleged that many Members had caught influenza because, having used their headgear for reservation purposes, they had wandered hatless through the

corridors. Mr. Speaker Peel told Members that a card placed on a seat was a perfectly adequate substitute for a hat.⁽⁸⁾

On the whole, Back Bench Members seem to have shared the view of Mr. John Bright that "there is no other country in the world where there is a legislative Assembly the arrangements of which are so inconvenient and so insufficient for the hon. Members of it as is the case with the British House of Commons. . . . It is a disgrace to the civilization, as it is to the architecture, of our time."⁽⁹⁾ Colonel T. H. Davies, on the other hand, thought that the Members were as much to blame as the building. The House seemed to him more like a bear-garden than a deliberative assembly: "The noise is excessive; and Members, instead of attending to the proceedings, amuse themselves with talking or lie stretched at full length asleep on the benches."⁽¹⁰⁾

There were frequent suggestions for a Chamber of a larger size and a better design. Mr. Henry Drummond thought the problem of the best size for a Chamber should be solved by taking the fattest Member they could find and multiplying him by 658.⁽¹¹⁾ Mr. Henry Warburton wanted a semi-circular Chamber⁽¹²⁾ but Sir Robert Inglis considered that this was "an idea borrowed from the new—and I would add vulgar—legislative assemblies on the other side of the Atlantic."⁽¹³⁾

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Lack of seating accommodation was not the only complaint. Few matters can have caused greater heat, for example, than the question of the ventilation of the Palace of Westminster. Our Victorian forebears, of course, avoided using such words as "ventilator", preferring to talk of "orifices for the egress of vitiated air". The Government of the day, whatever its political complexion, was usually rather sensitive about ventilation and regarded complaints from Members on this score as having deep political motives. Sir William Molesworth, the Cabinet Minister responsible, assured Lord Robert Cecil rather testily in 1855 that the matter of ventilation was quite properly managed. An officer of the House received half-hourly reports on the state of ventilation. He resisted Cecil's suggestion that ventilation should be placed

under the care of a sessional committee.⁽¹⁴⁾ In 1882 Mr. Shaw Lefevre, answering a complaint from an Irish Member about "noxious exhalations", said that the Chairman of Committees, a man who was "peculiarly sensitive to smells", had opined that the House was well ventilated.⁽¹⁵⁾

As early as 1831 the matter of ventilation had been raised in the Commons by Sir Frederick Trench, who regarded himself as an authority on such matters. Trench complained of the unpleasant atmosphere in the House which, he said, "has already caused the death of several hon. Members in the course of this arduous Session".⁽¹⁶⁾ In 1838 he again raised the matter, and suggested that it be looked into by a committee—though he indicated that he was unwilling to serve on the committee himself.⁽¹⁷⁾ A few years later the matter came up in the Lords. Lord Campbell, who had served in the Commons and was elevated to the Woolsack in 1859, told their Lordships in 1845 that a number of peers "suffered so severely last night from the imperfect ventilation, and the sudden draughts of hot and cold air, that they have been unable to attend to the legal business in the House to-day".⁽¹⁸⁾ A year later Campbell repeated his complaint: the trouble, he said, was getting worse and worse, and when he arrived in a morning the air was "not respirable".⁽¹⁹⁾ A few weeks afterwards he told the House that it seemed as if "we are sometimes in Greenland and sometimes in Bencoolen".⁽²⁰⁾

But let us return to the Commons where, according to Captain H. G. Boldero, the smell was "like bilge-water in an open sewer".⁽²¹⁾ In 1859 Mr. S. A. Ayrton made an impassioned attack on "the outrageous manner in which the ventilation of the building is conducted". He complained that when the Chamber was too hot, "cold air is pumped in at the feet of the hon. Members, the effect of which is to drive the blood to their heads". On one occasion "most abominable odours were pumped in".⁽²²⁾ Mr. E. S. Cayley thought this attack was a little unreasonable. It was all very well to complain of unpleasant smells, but where were they to obtain pure air in the heart of the metropolis? Perhaps the hon. Gentleman would provide it himself.⁽²³⁾

In 1883 Mr. A. P. Vivian demanded an investigation into the question of ventilation and told the House of "a witness who recently gave evidence before a Committee, was taken ill in the Committee Room, and expired shortly afterwards",⁽²⁴⁾ and in 1887 Mr. H. H. Howarth informed Members that the Town Clerk of Sheffield had been taken ill in the Private Bill Committee Room and had subsequently died.⁽²⁵⁾ In 1884 Mr. Speaker Peel took official cognizance of the matter, and apologized for the prevalence of "an odour of a very dangerous and deadly character" which seemed to be coming from the direction of Westminster Abbey.⁽²⁶⁾ A few weeks later Members were complaining that sewage gas had been inadvertently pumped into the House,⁽²⁷⁾ though one Member emphasized that the smell was more unpleasant in the "Aye" Lobby than anywhere else.⁽²⁸⁾

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Then there was the question of the Ladies' Gallery. The influence of women on Britain's parliamentary history is a subject in itself, but some light is thrown on the matter by a seemingly innocent question put to the Commissioner of Works in 1864 about the ventilation of the Ladies' Gallery. In the course of his reply the Minister said: "I remember that some years ago this subject was very generally discussed in this House, and many hon. Members maintained that if there was an open and visible gallery for the reception of ladies, the influence exercised by that gallery over the proceedings of the House would be such as not to be altogether desirable. . . . I must decline to remove that conventual grating, which has its uses, for it enables persons behind it to see without being seen."⁽²⁹⁾

In 1869, Mr. H. A. Herbert moved that "the grating in front of the Ladies' Gallery be removed". His statement that the temperature in the Ladies' Gallery was four degrees higher than in the rest of the House was greeted with laughter, but Mr. Herbert went on: "It is all very well for hon. Gentlemen to laugh, but you are here for your pleasure, while the ladies come to listen to us."⁽³⁰⁾ The seconder of the motion thought that if the ladies were visible, Members might appear

less frequently in a drunken condition.⁽³¹⁾ Mr. Beresford Hope, opposing the motion, said there were two sides to the question of the grating. Was the purpose of the motion to enable the ladies to flaunt their best dresses, or was it to allow ladies to enjoy a few hours of rational, intellectual enjoyment?⁽³²⁾ "I hope we are not going to add a flirting lobby to the House", he added. Mr. H. B. Samuelson, in a maiden speech, contested the view that the purpose of the motion was to enable the ladies to display their best clothes, "because it is the custom in Society for both sexes to appear in full dress or neither [*Laughter*]".⁽³³⁾

The subject was discussed again in 1876. Mr. William Forsyth thought that "it is in obedience to a stupid Conservatism that the grating was kept up, simply because it had been placed there".⁽³⁴⁾ Mr. Beresford Hope again opposed the removal of the grating. The matter had only come up because of the "occult influence" which radiated from behind the grating. It would be most improper to wink at the rules of Parliament as had been the practice a century earlier.⁽³⁵⁾ In 1894 Mr. Herbert Gladstone, the Commissioner of Works, rashly said he was prepared to remove the central section of the grating as an experiment,⁽³⁶⁾ but there were angry protests at this suggestion and nothing was done about it.

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For many centuries the House of Commons maintained a tradition of secrecy, and by a series of Resolutions the publication of reports of what was said in the House was forbidden. Though these Resolutions were never repealed and are in force to this day, they were in practice largely ignored from the beginning of the nineteenth century. In 1803 William Cobbett began publishing the parliamentary debates, and in 1807 T. C. Hansard, Cobbett's printer, purchased his interest in publishing them.

By 1830 Members had come to value the parliamentary reports and Colonel Charles Sibthorp—who, it must be confessed, was a trifle eccentric—was asking that the reporters should be given proper accommodation, "so that more full and more accurate accounts of what is said in this House will

be published".⁽³⁸⁾ A year later, however, Colonel Sibthorp described the Press as "corrupt, hired, and perverted", apparently because his own speeches were not reported fully enough.⁽³⁸⁾ In 1867 an Irish Member expressed concern that only the London newspapers had access to the Reporters' Gallery, but Lord John Manners assured him that the explanation was perfectly simple: "the accommodation there is very limited".⁽³⁹⁾ Two years later another Irish Member was asking that the Reporters should be provided with "lavatories suitable for educated gentlemen".⁽⁴⁰⁾ In 1890 Mr. Bradlaugh shocked the House by asking whether a lady reporter could be admitted. Mr. Speaker Peel said that the Serjeant at Arms had decided, very properly in his opinion, that there could be no departure from traditional practice: the matter was clearly one "possibly leading to consequences which it would be difficult at this moment for the House to foresee".⁽⁴¹⁾

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The feeding of Members and others whose duties took them to the Palace of Westminster was, until a hundred years ago, left to private enterprise. "Quaker's Tavern" in the Great Sanctuary of Westminster Abbey, "Heaven", "Hell", "Alice's Coffee House", "Jacob's", and the indiscreet orange girls who frequented the lobbies helped to satisfy the appetites of Members. In 1773 the Deputy Serjeant at Arms started a catering business as a side-line, but as accommodation, fuel, and the wages of his staff were met out of public funds, it was not difficult to show a profit. In 1848 the House of Commons set up a Committee to look after the Kitchen and Refreshment Rooms.

For a time Members seem to have taken only a minor interest in the catering arrangements, but in 1880 we find Lord Randolph Churchill complaining of the limited accommodation in the refreshment bar,⁽⁴²⁾ and a few years later a Dr. G. B. Clark is objecting to the subsidy of £1,000 a year which was requested by the Kitchen Committee. "Let us pay the full market value for our cups of tea and dinners", said Dr. Clark virtuously.⁽⁴³⁾ The following year, however, a

Member was asking: "Why must Members pay more in the House than they do for a good dinner at a restaurant outside?"⁽⁴⁴⁾

Towards the end of the century the question of selling alcoholic refreshments arose. The Attorney General had ruled that it was illegal to break the licensing laws, even if the place were the Palace of Westminster and the persons were the Gentlemen of the House of Commons. Mr. T. M. Healey was shocked by this. "This House, on a former occasion, took off the heads of a few kings, I understand; they did not look for law and order in those proceedings; and certainly, in the case of supplying adequate refreshments to Members, we have sufficient warrant in our own necessities to dispense with the necessity of any special legislation."⁽⁴⁵⁾

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Until comparatively recently Members do not seem to have been much concerned with the accommodation provided for the general public, though there are half-hearted references to this from time to time. In 1882 Mr. Joseph Cowen requested that more accommodation should be provided for strangers, and was told: "It is totally impossible."⁽⁴⁶⁾ In 1870 Mr. W. Stacpoole asked that seats for the general public should be placed in the Central Hall and was informed that the Lord Great Chamberlain took the view that "if seats are put up in the Central Hall they will become the resort of idlers and loungers".⁽⁴⁷⁾

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But the most outspoken remarks were reserved for Barry's design for the Palace of Westminster. Joseph Hume thought the building was "ephemeral", "gaudy", and with an excess of "frippery";⁽⁴⁸⁾ Barry should be put under a curb and bridle, for he had had his own way too long; if a schoolboy had designed such a building, he would have been flogged.⁽⁴⁹⁾ Mr. Benjamin Disraeli suggested even more drastic action. After Admiral Byng had been shot, the efficiency of the Navy had increased and we had been victorious at Trafalgar. Why confine execution to unsuccessful admirals? The Government should consider extending the practice to architects.⁽⁵⁰⁾

Mr. William Williams alleged that "Barry cares nothing for the public purse: his only object is to glorify himself".⁽⁵¹⁾ Mr. Bernal Osborne considered that the money spent on the Houses of Parliament was the grossest case of wasteful and profligate spending that had ever come before the House:⁽⁵²⁾ the building was "an Italian composition, with a Gothic dress—a thing that so frittered away in details, that in a few years it will be nothing more than a metropolitan asylum for birds' nests and soot".⁽⁵³⁾ The only thing to do was to use the building for the 1851 Exhibition.⁽⁵⁴⁾ Mr. Henry Drummond thought the exterior ornamentation would form "the most magnificent aviary for swallows and sparrows the world has ever seen".⁽⁵⁵⁾

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Many of the quotations in this article seem odd to-day, but this is not because M.P.s have stopped grumbling: it is rather that M.P.s now grumble about different things. The parliamentary wit no longer asks that there shall be seats for all Members: he complains that snoek has been served too often in the Members' Dining Room. No doubt the writer of an article in *Parliamentary Affairs* during the twenty-first century will find this vastly amusing.

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REFERENCES TO HANSARD

(1)	Third Series, Volume	16, Columns	303-5
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(18)	Third Series, Volume	81,	Columns	121
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(55)	" "	" "	111,	341

THE IRISH PARTY WITHIN THE IMPERIAL PARLIAMENT

by J. D. LAMBERT, B.A., B.Litt.

THE origin of an Irish National Party within the Imperial Parliament of Great Britain and Ireland may be said to date from the first assembly which followed the Act of Union in 1800. To it was elected Henry Grattan, chief opponent in the Dublin legislature of the Union, who continued practically single-handed his opposition, and with more support and good fortune his advocacy of Catholic Emancipation. It was Daniel O'Connell, however, some thirty years later, who may more truly be said to have created a Home Rule Party. By that time Catholic Emancipation, thanks to Grattan and O'Connell himself, had been won. The struggle thenceforth was for Repeal, and for whatever scraps of remedial legislation that could be snatched from the platter of the Anglo-Saxon partner.

For a nation which has prided itself on a love of freedom and justice, any impartial retrospection of England's treatment of Ireland leaves the impression that many of her politicians were thorough hypocrites or capable of the most arrogant egoism and stupid self-deception. Liberty and justice were attributes to be enthusiastically promoted in Greece, Belgium and Italy, but not so near at home as in Ireland. But from the ruck of short-sighted, opportunist and parochial politicians there has usually emerged in British parliamentary history some statesman of genius, honour and courage, for whom the much paraded virtues of freedom and justice have outweighed self-interest and expediency. The possibility of Ireland obtaining Home Rule through constitutional action only appeared when Gladstone, convinced that his initial reforms were not enough to right the wrong, converted the majority of his party to some measure of Irish autonomy. And even in the end, so

strong were the forces of reaction that final independence was won only through the means of violence.

The struggle for Irish parliamentary independence began even before the Dublin legislature was abolished. As early as 1495 Poyning's Law had claimed for England the right to enact legislation which was binding on Ireland. To enforce the acquiescence of the Irish, the Crown, during succeeding centuries, endeavoured to pack the Dublin Parliament with its placemen. On the whole these tactics were successful though occasional outbursts of revolt took place, as during the struggle between James II and William of Orange when the native parliament asserted its independence in law-making and repudiated the Poyning's Act. But during the eighteenth century, as the growing commercial prosperity of Ireland became such a serious challenge to English economy, control was increasingly tightened by the election of corrupt and subservient tools known as the "Undertakers". Even then protests were occasionally voiced against the English pillaging of Irish treasury surpluses to provide pensions for the King's mistresses or the Viceroy's butlers. By 1782, however, England's abuse of the Irish legislature had provoked such misery and protest that Grattan was able to force through that assembly an Act of Renunciation whereby any English rights over Irish legislation were surrendered.

In a great measure this victory was illusory. The Irish parliament remained a Protestant oligarchy, still susceptible to corruption and influence. In addition Pitt now began to prepare the way for Union itself with all its attendant and alien impositions. The rebellion of 1798 afforded an excuse. The Irish Parliament, despite the eloquence of Grattan, was cynically bought and equally cynically sold. In the Westminster legislature itself, Grattan saw that the cause of Repeal was beyond immediate realization. The Protestant ascendancy must first be breached, and in his campaign for Catholic Emancipation he could count on both English and Irish allies within the House of Commons. Yet the cause of Repeal was never absent from his mind, and almost his last utterance to his fellow Irish was to "keep knocking at the Union". O'Con-

nell, who professed that he placed more importance on Repeal than Emancipation, did not neglect to bring Grattan's work in this latter cause to fruition. Yet even before Catholic Emancipation was won, a Repeal candidate had been elected to Westminster. In 1826 Villiers Stuart, supported by the Catholic Association and O'Connell, defeated the nominee of the Beresfords at Waterford, a constituency that hitherto had been the exclusive "property" of that great Anglo-Irish family. The Association prepared to sponsor other Protestant candidates. And then O'Connell himself, after some hesitation, contested and won County Clare, though as a Catholic he was still technically debarred from taking his seat. The English resistance to Emancipation broke, and a few months later it was legally conceded by the Imperial Parliament. By 1832 the O'Connellites had gained 45 seats out of the 105 Irish constituencies. O'Connell himself had been returned for Dublin City, and many of his numerous kith and kin, including three sons, known as the "Household Brigade", accompanied him to Westminster.

In the House of Commons O'Connell inaugurated the tactics of attempting to hold the balance of power between the Whigs and Tories, and of using during debate the system of obstruction by contesting almost every word and sentence of a Bill. But neither English party was prepared to offer such a high bid as Repeal for his support, and any remedial legislation which he won was promptly scotched by the Upper House. The moral was plain. Only by help from a leader of one of the English parties could Repeal be gained through constitutional methods. O'Connell became more and more reconciled to accepting what scraps of reform he could for Ireland, and his lack of success was reflected in the diminishing strength of his party in parliament. Even the Liberator himself was defeated in 1841.

In Ireland itself discontent with O'Connell's lack of success was voiced by the Young Irelanders under Gavan Duffy, Thomas Davis, and John Blake Dillon. They advocated the formation of a parliamentary party which would resolutely refuse any alliance or favours from the existing Government,

and concentrate upon the winning of Repeal by gaining an effective balance in the political power. The failure of O'Connell's constitutional agitation and the appalling miseries of the famine of 1846 drove many of the Young Irelanders into the parody of an insurrection in '48. The more sober elements who survived realized that Repeal was beyond immediate attainment, and resolved to shoot their arrow at Land Reform. By 1852 a substantial majority of Irish members were pledged to support Crawford's Tenant Right Bill. But any hope that Duffy, Moore and Crawford had of creating a resolutely independent Irish party was doomed. Too many of the Irish Members returned were lawyers whose chief aim in entering the House was to promote their professional advancement. The existing Irish electorate was too passive, ignorant or easily influenced to exercise any discrimination. And on O'Connell's death there arose no leader to inspire them anew. The Whig administration of Lord Aberdeen soon set about seducing the Irish Members by the offer of official favours, and the ranks of the Home Rulers were thinned by the defection of some half their strength. The campaign for Tenant Right alone was thus hamstrung by a single blow. The rump of the party, it is true, continued to bring its Bill periodically before a polite if bored Commons which relegated it, until the next session, to the parliamentary limbo of lost and hopeless causes.

Ireland turned once again to revolutionary means. Mitchel and Meagher, two extremists and former Young Irelanders, and Stephens and the O'Donovan Rossa, backed by the Irish Americans, inspired the Fenian rebellion of 1865 which, if more dangerous than its predecessor of twenty years before, came to the same unhappy and ineffective end. For Ireland there seemed little left save despair. And yet within some twenty-five years a Home Rule Bill had passed the House of Commons.

It is said that the first words uttered by Mr. Gladstone on receiving the command to form his first administration in 1868 were that his mission was to pacify Ireland. Here at last was an English leader who could see Ireland's problem in a light different from the ordinary run of English politicians, with a

mind fired by Hellenic humanism and Christian ideals; one who possessed the commanding genius and resolute courage necessary for that desperate fight to redress the wrongs his country had so long inflicted. The beginnings were admittedly far from satisfying Irish aspirations,—the Disestablishment and Disendowment of the Established Church, a Land Act—but they were enough to encourage Home Rulers with at least the thought that a new and sympathetic policy was to replace the alternate indifference and repression meted out to Ireland in former years. A new life flowed into the cause of constitutional agitation, and in 1870 there was formed the Home Government Association under Isaac Butt, a Protestant Irish lawyer who had formerly defended both the Young Irelanders and the Fenians. At ensuing by-elections the Association gained successes in returning some of its candidates, and at the election of 1874 around 60 out of 103 Irish Members were pledged to the cause of Home Rule. They were, however, a “mixed bag”, young patriots, old nationalists, and that inevitable element of place hunters who were the bane of Irish parliamentary life. Moreover, their most likely sympathizers, the English Radicals, had suffered severely in the election, and the House was now packed with a triumphant Tory majority. In such circumstances Isaac Butt, the new leader of the Home Rule party, scarcely possessed the qualities of leadership capable of inspiring his followers to a resolute campaign. A lawyer of genius and a brilliant orator, he possessed too deep a respect for the traditions of parliamentary procedure and too great a personal amiability for the effective and ruthless use of his forces, which was to characterize his successor, Parnell. Butt accepted with gratitude the occasional offers of the Disraeli administration to air Irish grievances and bring forward a periodic motion for Home Rule; and, like a gentleman, was content by pre-arrangement with the cynical Tory leader to drop the subject before it caused too much embarrassment to the Government.

It was this accommodating spirit that one of his more spirited allies, Joseph Biggar, violated on the very day that Parnell took his seat in April, 1875, by delaying the passage of Disraeli's Coercion Bill for Ireland in a speech,

occasionally totally irrelevant, of some four hours duration. From the outset Parnell and Biggar, united in their detestation of English rule and in their contempt for Butt's easy moderation, formed an ideal combination. Around them gathered some half dozen other rebels, who, under the resolute and calculating guidance of their leaders, became so adept in the use of obstruction that in 1877 they were able to delay the passing of the South Africa Bill for twenty-six hours. Such a display of fighting temper did not fail to impress those extra-parliamentary bodies such as the Home Rule Confederation and even the *Clan-na-Gael*.

But the Home Rulers within the House itself were by no means prepared to accept Parnell as their leader. On the death of Butt in 1879, Shaw, a moderate follower of Whig tendency, inherited the leadership. Parnell and the left wing now began to ally themselves with the native advocates of an advanced agrarian reform, such as Michael Davitt, and to attempt the formulation of some compromise policy which would secure themselves the support of the revolutionary *Clan-na-Gael*. In the general election of 1880 Parnell, in many cases at his own expense, ran his own candidates in opposition to those of Shaw who controlled the exchequer of the Nationalist Party. His move was so successful that a few months later he was able to oust the latter from the leadership, though the schism within the party continued.

Ireland, after six years of Tory rule which had reversed the Liberal policy of reform and had abetted the violation both in spirit and letter of existing legislation, was once more reduced to a most pitiful state of misery and discontent. Moreover, the hope of better times under the newly elected Liberal administration was soon to be disappointed. Parnell had become deeply committed to the extreme claims and tactics of Davitt and the Land League. The reforms of Gladstone were nullified by the reactionary House of Lords, and before long the Parnellites were at loggerheads with the Liberal Government. Their support of agitation which bordered on the revolutionary in Ireland, their most desperate use of obstruction in the House itself, drove the Liberal leader into a new Coercion Bill, and

a revision of parliamentary procedure by the introduction of closure of debate. For Parnell there was probably no other course if he were to retain and increase his hold upon Ireland. Moreover, sorely tried though Gladstone was by such tactics, he never lost his sympathy for the Irish or ceased to work for the passing of remedial legislation.

The third Reform Act of 1885, by enfranchising completely the lower classes and thereby increasing the Irish vote both in British and Irish constituencies, enhanced the electoral prospects of the Parnellites. The Tories themselves, in return for support of their candidates in the home constituencies, were prepared to grant concessions to the Home Rule claim. Gladstone remained silent, and Parnell, piqued and baffled by his refusal to vie with his opponents in the bidding, threw the Irish vote in Britain on the Conservative scales. It was a sorry miscalculation. The Liberals secured 331 seats, the Tories 251, the Parnellites 86. His new allies, realizing the uselessness of the Parnellite vote, quickly jettisoned him, and the seats which he had presented to them, together with those of the dissident Liberals who refused to swallow Home Rule, were sufficient to turn the tide against Gladstone's first attempt to give Ireland some measure of autonomy.

The Liberal leader now set out on that last crusade which he was to follow with an altruism and devotion sadly lacking in the later career of the Irish leader himself. He had been content to leave to the Tories, with the offer of his full collaboration, any fresh attempt to solve the Irish question in 1885, believing that their leader, Salisbury, as the far younger man, was better fitted than himself for the task. But the Tory interest in any new approach was purely opportunist, and Gladstone alone was sincere about the task, alone possessed the authority and energy to mould English public opinion in a pattern which would fashion justice for Ireland. His rebellious right wing Whigs and left wing Radicals in alliance with the Tories were, however, sufficient to outnumber his faithful remainder and the Parnellites. The Home Rule Bill was rejected by a bare thirty votes, and the second general election of 1886 sent back a Tory-Liberal Unionist majority which was

prepared to deal out to Ireland "twenty years of strong and resolute government".

The years that followed, culminating in the final tragedy of 1890, were marked by a mental and physical deterioration in the Irish leader which was to break his party and postpone Irish independence for another generation. In the election of 1885 Parnell had, despite the protests of many of his followers, insisted upon the candidature for Galway of a Captain O'Shea, the *mari complaisant* of his mistress. During the Tory administration of 1886-92 his infatuation for Kitty O'Shea, and the strain of avoiding the scandal which her worthless husband (who had lost his seat in 1886) threatened to create, began to impair increasingly Parnell's political judgment and action. His prolonged absences from the House and from Ireland undermined the allegiance of many of his followers and contributed to a serious weakening in the effectiveness of the party itself. Gladstone and the Liberals, faithful to their Irish allies, fought on against Tory coercion in the House, and "stumped" the country to arouse public opinion for the next election, whilst Parnell passed the greater part of his time with "Queenie" in Brighton. Thus many of his followers came to see in the English statesman the leader to whom above all others they owed their allegiance.

The end came in 1890 with O'Shea's petition for divorce. Political expediency and common sense alone demanded that Parnell should acquiesce at least to a temporary retirement, which his Liberal allies and many followers demanded, whilst the issue of Home Rule was being fought out. Its realization, for which during nearly a century his countrymen had fought, was, through his own earlier efforts and through the courage, altruism and genius of a far greater than he, almost attained. But Parnell, prompted by vanity and infatuation, his judgment impaired by sickness and strain, chose to split his party in an endeavour to retain his leadership. Hampered by bitter dissensions in his allies, Gladstone fought his last election in 1892 and passed the Home Rule Bill by a majority of thirty, a number insufficient to intimidate the House of Lords into accepting the measure.

Divided amongst themselves and slowly losing their hold upon Ireland, the Home Rule party were destined like their Liberal allies to spend long years in the political wilderness. Indeed, never again did they attain that cohesion and resolution which made them a powerful factor in the parliamentary arena of the mid-eighties. Ten of them remained faithful to Parnell until his death in 1891, when Redmond became their leader. The remainder, for a time under the nominal chairmanship of McCarthy, disintegrated into splinter groups under Dillon, Healy and O'Brien. Personal enmities, differing attitudes towards the new Tory policy of "killing Home Rule with kindness", and varying conceptions about the nature of Home Rule kept them in disunion until 1900. In that year Redmond was accepted as the leader of a re-constituted party in the House itself, whilst Dillon retained control in Ireland. Neither of them possessed the personality to command the allegiance of their fellow countrymen, nor the strength to weld the newly united elements into a harmonious or effective entity.

The fortunes of the party were to fare but little better when their allies, the Liberals, were returned again to power in 1906. The achievement of Home Rule now became dependent on breaking the veto of the House of Lords. Even when this was accomplished the threat of armed rebellion in Ulster caused the Government to falter in implementing Home Rule legislation. The ineffectiveness of the Irish parliamentary party, the vacillations of the Liberals, assisted in the growth of the Sinn Féin, first founded by Arthur Griffith in 1905. The Sinn Féin distrusted the alliance of Irish representatives with any English party and based its political principles upon independent and resolute action by the Irish electorate alone. Its influence was further increased during the war years, particularly by English treatment of the leaders of the abortive 1916 rebellion and the imposition of conscription on Ireland in 1918.

The action of James Connolly, leader of the Citizen Army, on Easter Monday, 1916, in hoisting over Liberty Hall in Dublin the orange, white and green tricolour of the Young

Irelanders, marked the ending of any further constitutional struggle by Irish representatives within the Parliament of Westminster. True, the Sinn Fein later placed its candidates successfully in the various by-elections, but they were pledged not to take their seats. At the General Election of 1918, the movement decisively annihilated the candidates of the old Irish parliamentary party, and on the 21st January, 1919, formed the *Dail Eireann* which proclaimed itself the legitimate Parliament of Ireland. In 1920 came the Home Rule Act which partitioned Ireland politically into the six northern counties of Ulster, and the twenty-six of the South, each with a legislature for domestic affairs. Such a concession, acceptable in 1886, was now too late. Continued strife exacted the Anglo-Irish Treaty of 1921, whereby an Irish Free State was created with Dominion status, from which Ulster withdrew. But under the inspiration of De Valera, who supported Erskine Childers' proposal that Ireland as a geographic unit should be an independent nation, loosely associated with Britain, the Free State progressively cut the remaining bonds. By the Constitution of 1937, which in theory applies to all Ireland, she declared herself the sovereign and independent State of Eire. Thus there still remains the question of the "partition" of Ireland. Meanwhile two Irish Nationalists elected out of the twelve Ulster seats in the Westminster Parliament, but not taking their seats, remain as heirs of Grattan, O'Connell and Parnell.

This is the position after the long struggle on the part of Ireland to regain that independent parliament which had been suppressed by the selfish interests of her sister nation. The long constitutional battle within the Imperial legislature ended in failure, a failure due in part to the individual and collective frailties of the Irish representatives at Westminster, but if the balance sheet of right and wrong be impartially scrutinized, principally the result of English injustice and egoism. The independence which had finally to be conceded to force was far more comprehensive than that demanded by constitutional agitation, and granted so tardily that any hope of Ireland remaining freely a member of the British Commonwealth was irreparably prejudiced.

THE PAYMENT OF MEMBERS IN CANADA

by NORMAN WARD, Ph.D.

(Assistant Professor in Political Science, The University of Saskatchewan.)

THE payment of Canadian Members of Parliament and Senators, who have until recently been treated as having equal claims to indemnification for their attendance at Ottawa, began immediately after Confederation in 1867. The sessional indemnity, with the curious rules which have grown around it, is thus as old as the Canadian Parliament, and must be considered in relation to the changing nature of political representation as the country has developed. That an indemnity was granted at all depended primarily on the fact that the Canada of 1867, like that of 1950, did not have a politically-minded leisure class whose members devoted themselves to public service without remuneration. On the contrary, the Canadian Parliament has always been full of men accustomed to payment for their services or their manufactures, who not unnaturally extended their expectations to political activity. A single proposal to abolish the indemnity has been introduced in the Commons, in 1868, and only forty-seven Members supported it.

Membership in the Parliament of Canada does not mean the same thing for all parts of the country. To many Ontario and Quebec Members (who compose over half the Commons) who can get home easily overnight or for long week-ends, politics can be a part-time occupation requiring frequent but not continuous attendance in Ottawa for a few months annually. To Members of the Eastern and Western provinces, who live from one to three days' journey from the capital, politics is in effect a full-time occupation, demanding a severance of direct connexions with both homes and businesses for over half of each year. Indeed, an ambitious Eastern or Western politician, considering both the time and money involved, might find it desirable to confine his activities to the

legislature of his province; provincial sessions are much shorter than those of the federal Parliament; the pay, on a proportionate basis, is as good or better; and the provincial capital is certain to be closer to his home than is Ottawa. In the prairie provinces of the West, where the farming season is short, there are thousands of agriculturalists who might conceivably spare a few weeks in the late winter for the provincial assemblies, but who could not consider going two thousand miles away for six months.

These facts are fundamental to representation in the Canadian Parliament, but are only partially recognized in the statutes and rules concerning the payment of Members. As is shown below, the recognition that does exist is rather the reverse of what seems reasonable, for while no appreciable concessions have ever been made to the Eastern and Western Members who make the greatest sacrifices to go to Ottawa,¹ the rules governing the indemnity have always been lax enough to facilitate greatly, if not encourage, the absence from Parliament of Members from Ontario and Quebec. The first Parliament of Canada granted itself a flat indemnity of \$600 for each Member, in sessions lasting over thirty days, while attendance at shorter sessions was rewarded by a *per diem* allowance. The indemnity was raised to \$1,000 in 1873, to \$1,500 in 1901, to \$2,500 in 1905, and to \$4,000 in 1920, at which last figure it has remained. In 1945, because high living costs and tax levies were making parliamentary membership unprofitable, the sessional remuneration was supplemented by an annual expense allowance of \$2,000 which was rendered tax-free for the Commons but not the Senate. An M.P. in Canada thus receives \$6,000 in an ordinary year (of which \$2,000 is not taxable) and \$10,000 in years when two sessions are held. A modern session must extend beyond sixty-five days before the full indemnity is available, and each Member must have fifty days' attendance to his credit to qualify for

¹ The only concession made to Members living far from Ottawa is that they may take, instead of their actual living expenses while travelling, an allowance of \$15 for each day spent travelling to and from a session, and many make a small net profit by taking the allowance.

his \$4,000; for shorter sessions, or shorter periods of attendance, a *per diem* allowance is paid.

These emoluments, except for a brief period after the first war, have always been distributed in accordance with a series of statutory rules which seem at first sight innocuous, but in practice are strangely unrelated to the industry or energy of the individual Members. Despite the demands made upon a Member by political activity, the indemnity has never been regarded as a salary for services rendered but merely a compensation for time lost from his own affairs. The statute in force to-day, which allows each Member during a session to collect regular payments from his indemnity at the rate of \$20 *per diem*, assumes that an unexpended balance will remain to be paid out at the end of each session. The \$4,000 indemnity, at \$20 daily, has thus all been "earned" when a session reaches its two-hundredth day, but the statute assumes no session will last two hundred days.¹ Yet while receiving an indemnity rather than a salary, a Canadian Member is not paid merely for being a Member, as he is penalized so heavily for absenteeism—on paper at least—that he must really earn his indemnity by attendance in his place.

But to the simple word "attendance" successive Canadian Parliaments have given a widening meaning such that it often appears to be synonymous with "absence". A contemporary M.P., for every day of absence, is supposed to lose \$25 from his indemnity and \$12.50 from his expense allowance, and in the past, *mutatis mutandis*, similar penalties have been provided. The severity of these penalties has been mitigated both by convention and statute, and it is genuinely difficult for a Member to refrain from earning a substantial portion of his pay, no matter how indifferent his attendance. Early in Canadian history a practice developed which allowed "paired" Members to leave before the end of a session and be paid as if in attendance to prorogation, and on occasion Mr. Speaker was embarrassed when disgruntled parliamentarians criticized him

¹ When a session does extend past the last indemnity payment, as it did in 1948, a certain agitation to hasten the day of prorogation becomes noticeable.

for authorizing the payment of "paired" absent Members, but not unpaired. On one of these occasions, a leading Member of the Commons observed revealingly, "I think it would be well for this House to come to the conclusion at once to obey the law."

Considerable latitude has been allowed in regard to illness during a session. Ever since 1867 Members have, by statute, been free to be sick anywhere within ten miles of Ottawa without being penalized for absenteeism, although Members so unfortunate as to be taken ill outside the ten-mile limit have had no permanent statutory protection. However, since well before 1900 annual bills have been brought down to indemnify those absent because of "illness, public business, and death", and the appropriations made on this account are occasionally substantial. There have been no recent complaints of Members taking unfair advantage of the illness clause to malingering, but in 1917 an experienced M.P. observed: "For a number of years the custom has grown up by which Members are allowed a certain amount of leeway on account of illness. I have known of men receiving some benefit from that provision in recent years that I thought was very shady indeed." The leader of the opposition then made a humorous reference to an affliction known as parliamentary illness.

Further latitude has been given Members since 1892 by statutes allowing a limited number of free days when Members could be absent without penalty. At first annual bills were enacted to prevent deductions for absenteeism until a Member had been away for six days. The six days grew to fifteen, and the fifteen became consolidated into permanent legislation, so that to-day parliamentarians are able to take holidays during a session without loss of pay. As Members have many things to do besides appear in Parliament, the provision of free days cannot be regarded as unreasonable.

Members receive additional free days, in effect, from a practice which counts them all as present on days when the House stands adjourned. This provision, which has existed since 1867, was originally of comparatively little importance, as the first sessions of the Canadian Parliament were brief and

ordinarily contained no prolonged adjournments. To-day sessions are of sufficient length that adjourned days reach a substantial total, with the result that all Members are credited with many days' attendance, and often with enough to qualify them for a full indemnity, without their appearance in the legislature. What this has meant in practice can be illustrated by two examples chosen at random. In 1902, Parliament was in session for ninety-two days, and actually sitting for only sixty-five of them, so that all Members were counted as present for the twenty-seven adjourned days. In addition, all Members were allowed fifteen free days. Sir Charles H. Tupper was absent thirty-six days beyond the fifteen days allowed him, and appeared in the Commons on fourteen separate days. Yet he drew, legally, over \$1,200 of his \$1,500 indemnity, and also a mileage allowance of \$557. In the session of 1947-48, a Member who attended one single day, and conscientiously reported his absence, would have received \$2,137.50, of which \$712.50 would have been exempt from taxation. This excellent remuneration would have resulted from the following calculation:

Length of 1947-48 session	..	..	..	209 days
Adjourned days				90
Free days				15
Actual attendance				1
				<hr/>
				106 days
Member counted as present on	..	..		106 days
				<hr/>
Number of days for which penalties assessed				103 days
Payment: \$4,000 minus (103 × \$25)	..			\$1,425.00
\$2,000 minus (103 × \$12.50)				712.50
				<hr/>
Remuneration for one day's attendance				\$2,137.50

A number of minor curiosities, all biased in favour of the delinquent rather than the conscientious Member, may be noted. Members of the Commons are solely responsible for reporting their own absences, although attendance is kept in the Senate, as the Senate's daily records name the Senators convened. The House of Commons in the past has successfully

resisted attempts of one or two private Members to have attendance taken. A day's attendance in either House may consist of a five-minutes' appearance in the Parliament Building or a steady twelve hours of correspondence, committee work, and debate, as the term "attendance" has neither a statutory nor a conventional meaning. A Member told me not long ago that he honestly did not know what attendance was; one party in the Commons, the Co-operative Commonwealth Federation, obviously interprets the term rigorously to mean continued presence in Parliament as long as it is sitting; but my informant had heard a prominent member of another party argue that a Member was in attendance as long as he was in Ottawa, a city covering several square miles. At least one Member of modern times, judging from his apparent health, the infrequency of his appearances in Ottawa, and the size of the indemnity which he drew each year, appears to have considered himself in attendance if he were anywhere in Canada.

It must not be inferred from this that Members of Parliament in Canada are not conscientious. The foregoing paragraphs have perhaps stressed the oddities of the sessional indemnity and the fact that delinquent Members are insufficiently penalized in relation to their more industrious colleagues. For the House of Commons as a whole, delinquent Members are the exception rather than the rule, for in two recent sessions the proportion of Members answering the division bells has averaged nearly 70 per cent. and 80 per cent. respectively; as the bells may ring at any moment, these figures are a fair measure of the number of Members in the building, although not necessarily in the chamber, when a division is called. It is to be noted that attendance is not nearly as good on Mondays and Fridays as it is on other days, and that by far the most conscientious Members come from the provinces most remote from Ottawa, while all the real delinquents are from Ontario and Quebec. Attendance in the Senate is difficult to appraise for the Senate has so little to do that it sometimes stands adjourned for days at a time. The Senate debates convey the impression that a small handful of Senators do all the work, for a large number of Senators, if

present, are silent both in the chamber and on committees.

A potentially serious weakness of the indemnity system is that it appears to be one of the many factors which have facilitated the control of Parliament by the executive. A striking instance of the use of the indemnity as a weapon was given in 1948, when the Prime Minister announced on February 20 that unless Parliament had finished its business by the end of June, the Government planned to adjourn the session until the autumn. But the \$4,000 indemnity, drawn at the rate of \$20 daily, was bound to be fully paid by June 21, so that Parliament had either to finish the session by the end of June, no matter how hurriedly, or face the prospect of an autumn sitting without remuneration. Parliament prorogued on June 30, and a more concentrated drive for prorogation has rarely been seen in Canada. But even without open threats the Canadian indemnity system, by facilitating the coming and going of individual Members while the controlling hand of the cabinet remains omnipresent, cannot help but strengthen the cabinet's position.

Fundamental to all these problems is one salient feature of the indemnity in Canada: the indemnity is not regarded as a payment for services rendered. If the remuneration of Canadian Members were directly related to the work they performed, so that industry were more clearly rewarded and delinquency made genuinely unprofitable, many of the disquieting results of the present method of paying Members would disappear. Membership in Parliament in Canada, considering the distances which some Members are required to put between themselves and their homes and businesses, and the length of modern sessions, should be regarded by both Members and electors as a full-time occupation, supported perhaps by a contributory pension scheme to compensate for the risks that many Canadians must take to enter Parliament. This latter proposal is no doubt utopian, and its introduction in Parliament would certainly be the occasion for a great outcry from the public—the same public which has so far remained happily indifferent to the archaic and generous rules by which its Members of Parliament are paid.

THE HOUSE OF COMMONS COIN
COLLECTION

by W. PALMER

ON the 9th May, 1950, the Speaker of the House of Commons, Col. the Rt. Hon. D. Clifton Brown, M.P., accepted on behalf of the House a collection of coins from the President of the London Numismatic Club, Mr. L. V. W. Wright. This unusual gift was the result of a proposal made several months ago to bury beneath the Foundation Stone of the new Chamber a series of coins having reference to important events in the history of the Commons. The Club's offer to present the coins was accepted, but when the subject was discussed with the Speaker he considered that it would be a pity to bury such an interesting collection and suggested that it should be prepared as a permanent exhibition in one of the Lobbies. We are happy to learn that this suggestion has been adopted. The gift consists of fifty-eight silver coins covering nearly seven hundred years of parliamentary history and it may be of interest to consider some of them.

Although the Normans used pounds, marks (13/4), and shillings for book-keeping purposes, the only coin struck in this country from 1066 until the middle of the thirteenth century was the silver penny, and therefore no surprise will be caused by the fact that the first four coins are pennies, of which the earliest (1265) is illustrated by Figure 1. Compared with modern currency these are curiosities and they were made by hand by the simple process of inserting a disc of heated metal of the correct weight between two dies and then striking them smartly with a hammer. The crude designs on the dies were reproduced in relief on the disc and as can be imagined such coins are rarely centred accurately. The travesty of a human face which seems to stare at us from this mediæval penny represents Henry III, and the style of the coin reflects the sad state of art and learning in the thirteenth century.

The reverse (or tail side) of this penny bears a cross which almost covers the disc. If small change were needed the coiners cut through the cross to give two semi-circles and hence two "half-pennies". If these two were each cut again to give four quadrants, then there resulted four "fourthings" or as we should say today "farthings". Edward I introduced circular halfpence and farthings, which obviated the need to cut the pennies into halves and quarters and the collection contains one of each of those struck by Edward III (Figures 2 and 3). The provision of fractions of a penny was undoubtedly a great boon to the poorer sections of the community, but it became equally clear that multiples of a penny were just as necessary. The counting of, say, £20,000 in silver pence was not only a waste of time but a most tedious operation. To meet this need Edward III struck in 1351 two new denominations—silver groats and halfgroats which equalled four pence and two pence respectively (his grandfather, Edward I, had issued a few groats)—and the collection contains a very fine example of one of these early half-groats (Figure 4). On the obverse (or head side) we see a full-face bust of the king surrounded by his titles in abbreviated Latin and on the reverse a cross with a quotation from the 52nd Psalm, POSVI DEVM ADIVTOREM MEVM (I have made God my helper) in an outer circle, and the name of the mint town CIVITAS LONDON (City of London) in an inner circle.

From the death of Edward III in 1377 until the time of Henry VII the old mediæval types continued, that is to say, the obverse showed a crude face of the monarch with no attempt at portraiture and the reverse some religious sign such as the Cross together with a quotation from Holy Writ. But in 1504 the Spirit of the Renaissance entered the English coinage. The mediæval designs passed away and a real portrait of Henry appeared on the coins, as may be seen by comparing the picture of his beautiful profile groat (Figure 5) with the four earlier pieces. The king was a man of considerable culture and made such great alterations in the currency that his later issues contain some of the most elegant designs ever produced in this country. We may note in passing

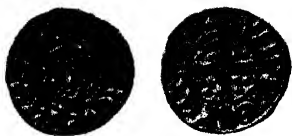


Fig. 1. Henry III Penny

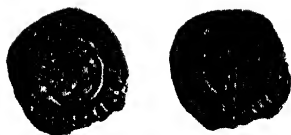


Fig. 2. Edward III Halfpenny



Fig. 3. Edward III Farthing

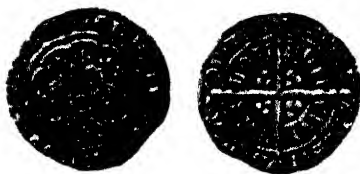


Fig. 4. Edward III Half-groat



Fig. 5. Henry VII Groat



Fig. 6. Edward VI Groat





Fig. 7. Elizabeth Shilling

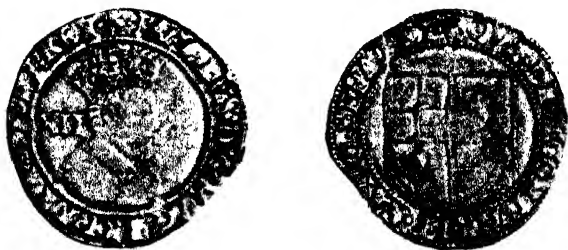


Fig. 8. James I Shilling



Fig. 9. Charles I Shilling

that he adopted a plan first invented by Henry III, but subsequently dropped, of putting a VII after his name on the coins.

When Henry died in 1509, he left his successor a full treasury and the finest coinage in Europe but in thirty years Henry VIII emptied the one and debased the other. The groats of Henry VIII form an interesting series and fall into three small groups. For the first fifteen years of his reign, he continued to strike those bearing his father's rather melancholy profile and simply changed HENRIC VII into HENRIC VIII. From 1526 to 1544, he issued them bearing his own profile portrait which shews a rather plump, clean-shaven young man, and finally in 1544 he changed the type to a full-faced bearded head which reminds us of his painting by Holbein. As by this time, owing to his unscrupulous debasement, the coins contained about 60% copper alloy, the silver wore off those parts in high relief, leaving the base metal exposed—hence the king's nick-name "Old Coppernose". Even after Henry's death in 1547, the Government continued to issue as much of the debased money as it dared, using the old dies. This meant that for the first part of Edward VI's reign, his father's coins were still being minted and Figure 6 shows one of Henry's groats issued after his death.

Although the collection contains only one coin of Queen Elizabeth, a shilling (Figure 7), yet her reign was one of the most important in the history of the coinage. In 1544 her father had debased the currency from the old standard of 92½% silver to alloys containing much less noble metal until by 1551 the standard dropped to 33⅓% silver, so that by the time Elizabeth came to the throne in 1558 hopeless chaos had supervened. Coins of the same denominations but of varying fineness were in use simultaneously, together with all sorts of continental currencies which were more popular than the debased English issues. It is to the everlasting credit of Elizabeth that she restored the coinage, a task of considerable difficulty and complexity. The Queen appointed a commission to examine the existing state of things and in order to determine the proportion of fine to base money in circulation an ingenious device was adopted of sending discreet persons to all the

butchers' shops in London with a request that they might be allowed to count over their tills, under the pretext of settling a wager as to the proportion of good and bad money in use. This recoinage placed English merchants at an immense advantage in trading abroad.

Figure 8 shows a shilling of James I and it will be seen that it bears the mark of value XII (pence) behind the King's head. Further on the reverse there is QVAE DEVS CONIVNXIT NEMO SEPARET which refers to the union of the crowns of England and Scotland.

The collection contains several coins of Charles I, who, besides being the most artistic of our monarchs, was also a coin collector. He used all his influence to improve the design of the coinage and in his years of peace raised the hammered money to its peak of beauty. The halfcrown bears on its obverse a picture of the king on horseback surrounded by the legend CAROLUS.D.G.MAG.BRI.FR.ET.HIB.REX and on its reverse a fine shield having in its first and fourth quarters the arms of England and France quarterly, in its second the lion of Scotland and in its third the harp of Ireland, surrounded by the legend CHRISTO AVSPICE REGNO (I reign under the auspices of Christ). We may note in passing that the word "legend" is a term used by collectors for words running round the edge of a coin inside the border to distinguish them from words written across the coin, which are referred to as an "inscription".

Figure 9 shows the Oxford shilling of 1642 which belongs to a unique issue; unique, because these Oxford coins are the only pieces which bear a direct reference to Parliament. On the reverse will be found an inscription, always called "The Declaration", in these terms—RELIG:PROT:LEG:ANG:LIBER:PAR which refers to the king's promise to defend the Protestant religion, the laws of England and the liberties of Parliament. The legend round the Declaration is EXVRGAT DEVS DISSIPENTVR INIMICI (Let God arise and let His enemies be scattered). We may notice that this shilling was struck at Oxford and not at London. We are so used to thinking that the money in our pockets was made at the Royal

Mint near Tower Bridge that it may not have occurred to us that currency was ever struck elsewhere. In Anglo-Saxon times sixty to seventy towns possessed mints and the number increased to one hundred under Cnut. During the Civil War the Royalists struck coins all over the country, including Lundy Island. Even among a handful of pennies of George V one sometimes comes across those of 1912, 1918 and 1919 bearing a little letter H by the date which indicates that they were made at Heaton's mint in Birmingham.

If the coins of Charles I are among the most beautiful of our hammered money, those of the Commonwealth are certainly the ugliest that have ever been struck in this country. Figure 10 shows a shilling of 1654, and it will be noticed that the legend "The Commonwealth of England" is on one side and "God with us" on the other, whence it was wittily said that God and Parliament were on opposite sides. The obverse shows the shields of St. George and Ireland conjoined in such a way as to resemble a pair of knee-breeches, which Lord Lucas said was "a fit stamp for the Rump Parliament".

The next figure shows a halfcrown of Cromwell as Protector, one of the few English coins which bears on its obverse a head not that of a monarch. Instead, the obverse shows a bust of Cromwell wearing a laurel wreath and gives his title in Latin which may be translated as "Oliver, by the grace of God, Protector of the Commonwealth of England, Scotland and Ireland, etc." The reverse shows Cromwell's arms on an escutcheon in the centre of a large shield having St. George's cross in the first and fourth quarters, St. Andrew's in the second and the harp of Ireland in the third. The legend is PAX QVAERITUR BELLO (Peace is sought by war). Incidentally, Samuel Pepys, who may have seen the Protector, considered the portrait on the coins to have been a good likeness.

The Commonwealth came to an end in 1660 whereupon Charles II was restored to the throne and then we notice a great change in the coinage. There are four of the king's coins in the collection—a groat, a three-penny piece and two crowns—of which the first is a hammered coin while the last is machine-made. Our modern currency had arrived.

Although experiments in the making of money by the screw-press had taken place under Elizabeth, Charles I and Cromwell, it was in the reign of Charles II that the old hammer and anvil process was discontinued and the press worked by a mill was adopted. The money made by the new method is called "milled" to distinguish it from the old kind known as "hammered". The word "milled" refers to the machine used and not to the serrations round the edge of a modern coin, which are usually called the "milling" but should be called the "graining" to avoid confusion. The new money was neatly executed, accurately round and a great improvement technically on its predecessors; further, it could not be clipped. Clipping consisted of shaving or cutting off some of the metal round the edge of a hammered coin whereby the weight was reduced. The early kings had worked on the theory adopted centuries later by Gilbert's Mikado of making the punishment fit the crime by enacting the ferocious penalty of mutilation, but nevertheless throughout the Middle Ages the evil persisted and really lasted as long as hammered coins were made. Figure 12 shows an early milled coin, a crown or five shilling piece of Charles II, and it will be apparent at once what an improvement the new process made. While looking at this picture, we may be reminded of the entry for 10th January, 1662, in Evelyn's diary. . . . "Being call'd into his Majesty's closet when Mr. Cooper, the rare limner, was crayoning of the King's face and head, to make the stamps by for the new mill'd money now contriving, I had the honour to hold the candle whilst it was doing, he choosing the night and candle-light for the better finding out the shadows. During this his Majesty discours'd with me on several things relating to painting and graving."

It will be observed that the crown is dated (1679) on the reverse although most of the coins considered hitherto have borne no dates. Edward VI was the first of our sovereigns to put a date on a coin and it seems extraordinary that so useful an addition should have been so late in suggesting itself. Even then dates were not put on all coins but they can be determined by observing certain symbols on the pieces. These



Fig. 10. Commonwealth Shilling

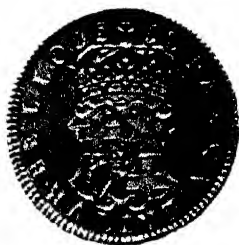


Fig. 11. Cromwell Half-crown



Fig. 12. Charles II Crown



Fig. 13. William and Mary Half-crown



Fig. 14. William III Crown



Fig. 15. George II Penny

symbols, usually called initial marks, were placed at the beginning of the legend and were changed every few years. For example, on both the obverse and reverse of the shilling of Queen Elizabeth (Figure 7) will be seen quite clearly an escallop shell which was used from 1584 to 1587 and thus dates the coin very approximately.

In Figure 13 we have an interesting coin, the half-crown of William and Mary, showing both profiles. The reverse possesses a shield of arms in which the quarterings are (i) the leopards of England, (ii) the lion of Scotland, (iii) the harp of Ireland, (iv) the lilies of France, and in the small inescutcheon the lion of Nassau.

Queen Mary died in 1694 and the double bust disappeared from the currency to give place to the single profile well illustrated by the crown of William III (Figure 14). In this reign the coinage was in such confusion that the Government decided to call in the old hammered money still in circulation and embark on a great recoinage. The trouble was caused by the evil of clipping the old money whereby there were in use simultaneously milled coins of accurate weight of Charles II, James II, William and Mary, and William III, together with hammered money dating back to Edward VI of all sorts of reduced weights due to wear and clipping. No one would exchange a new milled piece for an equal nominal value of worn pieces and it was even stated in Parliament that more than twenty-eight hammered shillings equalled a milled guinea which was also equivalent to twenty-two milled shillings. Hence twenty-eight hammered shillings of reduced weight could be changed for twenty-two milled shillings of correct weight and, as can be imagined, an intolerable amount of weighing and bargaining arose. By Proclamation of 1695, no hammered money was current after 1st February, 1697, and after that date could be sold to the Government at 5s. 2d. per oz. for recoinage.

We come now to a coin of particular interest—the Maundy Penny of George II, 1752 (Figure 15). As it is well known, the Maundy ceremony commemorates the washing of the disciples' feet by Our Lord and consists nowadays in the pre-

sentation by the reigning monarch of specially struck money to certain old men and women. The number of each sex corresponds to the age of the sovereign and the gift to each individual comprises money to the value in pence also equal to the sovereign's age.

Although George III came to the throne in 1760, by 1797 he had issued no silver crowns or halfcrowns whatever and no shillings or sixpences for ten years, with the result that the silver in circulation was completely inadequate to the country's needs. To overcome the silver famine, the Government adopted the singular plan of licensing the circulation of Spanish dollars providing they were countermarked with the head of the king. The countermark was small and oval in shape, being that used by the Goldsmiths' Company for stamping silver plate, and the effect of the tiny bust of George III on the large one of the King of Spain is very bad indeed. Further, these coins were current for 4s. 9d., whence the saying "Two kings' heads not worth a crown". Eventually in 1804 it was decided to recoin the dollar as a five shilling piece and here again a singular proposal was adopted. Instead of re-issuing it as a normal regal crown it was put forward as a five shilling token by the Bank of England. It is an extremely handsome coin as may be seen by the illustration (Figure 16). The next picture (No. 17) shows the 1818 crown of George III, a very beautiful coin. The obverse has a laureate head of the king, very finely engraved, surrounded by GEORGIUS III D:G: BRITANNIARUM REX F:D: Under the head is the date. Although the portrait appears to be that of a middle-aged man, the king was actually eighty years of age at the time. The reverse shows the celebrated design of St. George and the dragon, unquestionably one of the finest ever used, surrounded by a garter bearing the motto HONI SOIT QUI MAL Y PENSE. Both sides carry the signature of the eminent Italian engraver Pistrucci.

The sixpence of William IV (Figure 18) has the distinction of being the first silver coin to bear its mark of value (SIX-PENCE on the reverse) since the time of Charles II.

Of the coins of Queen Victoria in the collection, the crown

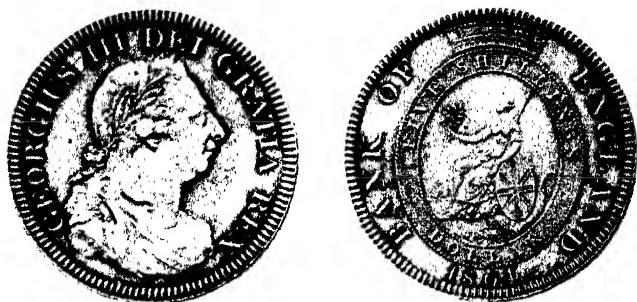


Fig. 16. George III Bank Dollar



Fig. 17. George III Crown



Fig. 18. William IV Sixpence



Fig. 19. Victoria Crown

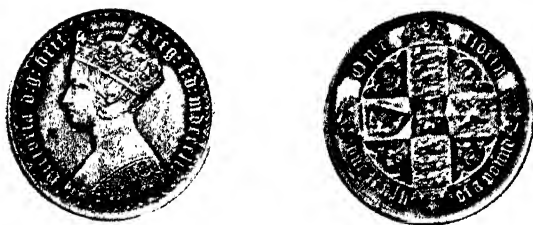


Fig. 20. Victoria Florin

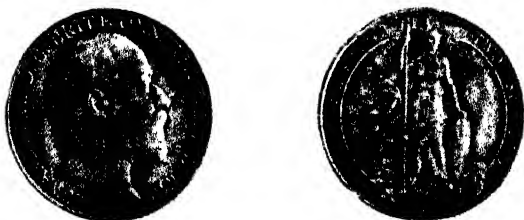


Fig. 21. Edward VII Florin

of 1844 and the florin of 1852 are of special interest and they are illustrated by Figures 19 and 20 respectively. The head of the Queen in the former is an extremely fine piece of engraving. The florin deserves consideration on account of the fact that in 1852 it was still something of a novelty. The silver florin made its appearance in this country in August, 1849, largely as the result of an agitation for a decimal currency: although two Royal Commissions and three Select Committees examined the subject and all except one recommended a reformation of the coinage, yet the florin remains as the only representative of a decimal currency in Great Britain. The new coin made a rather bad start because the letters D.G. were omitted from the first issue, which merely said VICTORIA REGINA. This gave rise to the story that the Master of the Mint, being a Roman Catholic, was unwilling to agree that Her Majesty reigned by the grace of God. Hence the florins of 1849 are always called the "Godless" or "Graceless" florins. The matter was rectified in the second issue of 1851 and since then there have been no omissions. Figure 20 shows the 1852 coin and it will be observed that it reflects the Gothic revival of the fifties of the last century.

The remaining coins in the collection are those of Edward VII, George V, and George VI, which are so well known as to need no description, but we might glance at Figure 21 which shows the Edwardian florin of 1905. Some collectors regard the reverse of this coin with the standing figure of Britannia as the finest in the British series.

Herbert Spencer once remarked that a numismatist was simply a collector of dead facts, but the House of Commons' collection connotes not dead facts but a series of pictures which illustrates the changes in fashion and in art from the Middle Ages, through the Renaissance and Restoration to Modern Times.

ACKNOWLEDGMENTS

Thanks are due to the many friends who assisted in the formation of the collection and especially to Major General A. J. K. Pigott, C.B., C.B.E., to the eminent authority on the coinage, Mr. Charles L. Mason, and to Mr. H. A. St. G. Saunders, M.C., Librarian to the House of Commons who displayed such keen interest at every stage of the work.

The pictures are by courtesy of the authorities of the British Museum.

STANDING COMMITTEES IN THE HOUSE OF COMMONS, 1945-50

by J. G. S. SHEARER

ONE of the features of the twentieth century state has been the rapid growth in the volume and the speed of legislation. In a memorandum submitted to the Select Committee on Procedure, the Clerk of the House, Sir Gilbert Campion, showed that between 1906 and 1938 the increase in this country, both in volume and in speed, had been almost threefold.¹ This reveals a significant trend even before the Second World War. In 1945, with post-war reconstruction necessary on a large scale and a Labour Government in office, an even greater volume of legislation was envisaged. The translation of this on to the Statute Book, in the limited parliamentary time available, was thus a problem of considerable magnitude.

Parliament, however, proved equal to its task. And prominent among the measures which it took to expedite the passage of legislation was that of making greater use of its Standing Committees. These committees are substitutes for the Committee of the Whole House and as such have the important task of considering the committee stage of public bills referred to them. On the basis of detailed examination, clause by clause and line by line if necessary, they aim to improve the quality of bills by introducing such amendments "as they shall think fit".²

In the last Parliament the number of standing committees

¹ Sir Gilbert Campion's (second) memorandum, published with the *Third Report of the Select Committee on Procedure*, 31st October, 1946 (H.C. 189). See Appendix, p. 356 of this Report. It is not, of course, possible to measure legislation exactly: a bill may be long but involve less legislative change than a shorter bill. The main point, however, is broadly correct.

² S.O. 40.

varied from five to six per session¹—Standing Committees A, B, C, D, E (as they are commonly denoted) and the Scottish Standing Committee. With the exception of the last of these, which is in a category by itself and for that reason will be considered separately, a standing committee consists of a nucleus of twenty Members to whom are added from twenty to thirty in respect of each bill. The average size of a standing committee is thus between forty and fifty—usually fifty. A smaller number, it is felt, would not carry sufficient weight to win the confidence of the House and might also prove too great a strain on the Opposition Members, especially in the case of long and complicated bills.

The members of each committee are nominated by a Committee of Selection, which is itself nominated by the House at the beginning of every session and is composed of experienced Members from all parties. In nominating Members, the Committee of Selection works to two principles. In the first place, it must “have regard to the Composition of the House”,² an instruction which is intended to secure that the parties are to be represented as nearly as possible in proportion to their representation in the House itself. Secondly, those Members who are added “in respect of the Bill” shall be chosen “with regard to their qualifications”.³ Under this provision the attempt is also made, in the case of bills relating exclusively to Wales and Monmouthshire, to give some kind of geographical representation as well. The Committee of Selection also has power⁴ to discharge Members for non-attendance or at their own request and to nominate others in their place. The arrangement is thus flexible enough to allow a Member who is not interested in a particular bill to ask to be discharged, or one with a special interest to ask to be included. In making its selection the Committee is assisted by the party Whips, though, of course, it is not bound by their recommendations. Even so, selection is still a tricky business,

¹ There were six standing committees during sessions 1946-7 and 1948-9.

² S.O. 58.

³ S.O. 58.

⁴ S.O. 58.

calling for a high degree of impartiality, and for that reason it is remarkable that one rarely hears of complaints from Members. At all events, the effect of applying these two principles and of permitting a fair degree of flexibility in their application is that standing committees are very much more "specialized" than they might at first sight appear to be.¹

The composition of the Scottish Standing Committee (which considers all public bills relating exclusively to Scotland) is governed by Standing Order 59. This lays down that the Scottish Standing Committee shall be composed of "all the members representing Scottish constituencies, together with not less than ten or more than fifteen other members" to be nominated, if necessary, to ensure that "the balance of parties in the committee" should approximate to that in the House as a whole.²

Each standing committee sits under an experienced chairman drawn from a Chairmen's Panel of not less than ten Members nominated by the Speaker at the beginning of every session. The chairman's powers are analogous to most of those of the chairman of Ways and Means.³ Various standing orders invest in him the power of preventing irrelevance or repetition, of refusing to put dilatory motions, and also of selecting amendments without any special instruction. He can accept a motion for the closure and his powers may be further

¹ It should be mentioned that this "specialization" takes place bill by bill. Standing committees do not specialize continuously. That this procedure gives us some of the advantages of the French and American systems without their disadvantages will be argued later.

² It might be mentioned in passing that since 1948 the Scottish Standing Committee, in addition to considering the committee stage of bills like the other standing committees, has also been considering both the second readings of some uncontroversial Scottish Bills and the Scottish Estimates. Along with the territorial specialization we have just noticed this gives Scotland, through its Standing Committee in Westminster, considerable management over its own affairs. There is, however, one qualification to this. In the event of the Scottish constituencies returning a majority of a different party from that of the majority in the U.K. Parliament as a whole, a redressing of the balance by the addition of English Members would seem to undermine considerably the powers and influence of the Scottish Members over their own affairs.

³ S.O. 57 (5).

increased if the House passes a Guillotine Resolution. Nor can his ruling on any procedural point be contested. As Sir Charles MacAndrew put it, "There is no appeal, even to Mr. Speaker, upon what I do here".¹ The chairman is assisted by a Parliamentary Counsel and a Committee Clerk, who sit on either side of him, right and left hand respectively. Various departmental officials and clerks of the House are also present. Here at one glance, so to speak, one may see the two sides of parliamentary government, Westminster and Whitehall.

It will be clear from this brief description of the size and composition of standing committees that they are in effect—what they are intended to be—microcosms of the House itself. One is not surprised, therefore, to find that between 1945 and 1950, when the need to expedite the passage of legislation was so acute, the House should have decided to make greater use of its standing committees. This change was reflected in two developments in particular. In the first place, many public bills that would previously have been debated in Committee of the Whole House were referred to standing committee. The provision that all public bills, with the exception of financial bills and bills confirming a provisional order, should be automatically committed to a standing committee "unless the House otherwise orders" is not new. It appears, for example, as S.O. 46 (1) of 1936. During the period under review, however, the House chose to order otherwise only in the case of small non-contentious bills or bills which it was desired to pass quickly, and those bills containing what Mr. Morrison described as "serious constitutional implications".² Examples of bills which came within this category were the Parliament Bill and the Representation of the People Bill. The nationalization measures, although clearly of the very first political importance, and although claimed by the Opposition to involve constitutional issues,³ were not deemed

¹ *Official Report of Standing Committee C on the Iron and Steel Bill*, col. 17. Cf. also Speaker Fitzroy's ruling, *Hansard* (1928) 219 c. 851, and Speaker Peel's ruling, *Hansard* (1889) 339 c. 1222.

² *Third Report from Select Committee on Procedure*, 31st October, 1946, § 5477.

³ e.g. *Hansard*, Vol. 431, Cols. 1339-40.

by the Government to do so in the strict sense and were accordingly sent "upstairs". The principle was thus established that the committee stage of substantially all public bills, however important, would be taken in standing committee and not on the floor of the House.

But of even greater significance has been the application of the guillotine closure to debate in standing committee, a step taken on three occasions between 1945 and 1950. The guillotine procedure had been used on the floor of the House since 1881 but was not applied to standing committees until 1947, when it was applied both to the Transport Bill and the Town and Country Planning Bill. On both occasions the committee stage had actually been begun. In the case of the Transport Bill, however, only five clauses had been passed after eleven sittings and it was clear that at this pace it would be a very long time (two and a half years according to one Member's calculations) before the Committee got through the remaining 122 clauses and 9 schedules. In these circumstances the Government decided to employ the special guillotine procedure and a Guillotine Resolution was passed requiring the bill to be reported from standing committee by a fixed date. For the same reason the Town and Country Planning Bill met a similar fate.

There can have been few who were happy about this procedure and in the case of the Gas Bill it was not employed. In the event, however, this latterly meant a tremendous pressure of work, ending in a double all-night sitting, and a warning from the Minister in charge that never again should a bill of this kind be referred to a standing committee without having a Guillotine Resolution. When the Iron and Steel Bill came up, therefore, the Guillotine Resolution was on right from the start.

This special procedure, known to the House as the Allocation of Time Order, involves four different stages. First, an allocation of time order must be passed by the House giving general instructions to a standing committee. When this has been done the Speaker then has the duty of nominating a business sub-committee of the standing com-

mittee, comprising the chairman and seven others. The business sub-committee is then summoned by the chairman and decides on the total number of sittings of the standing committee and the parts of the bill to be taken at each sitting or group of sittings.¹ Finally, at the next meeting of the standing committee, the Resolution is immediately put from the chair, and must be decided without any amendment or debate.

It is not surprising that this procedure in standing committee should have given rise to a great deal of controversy. One thing, however, is clear. The Government would not have got these controversial bills—along with all the other bills—enacted within the duration of any normal session without making use of the guillotine procedure. Those who criticized the Government maintained that the time allotted for the discussion of such long and complex bills was wholly insufficient. And an impressive array of figures was adduced to show how many clauses, schedules and amendments were either not discussed at all in standing committee or where discussion on them was severely curtailed. In the Iron and Steel Bill, for instance, 23 clauses out of 58 were not considered in standing committee and 7 of these were not discussed at any time. The critics also pointed out the extent to which the Labour Government had to have recourse to the House of Lords. In the case of the Transport Bill, for example, 139 amendments were necessary in the Lords. Psychologically, too, the effect of this is disheartening. The knowledge that at certain predestined hours each clause or group of clauses will pass through, whether they have been discussed or not, may easily produce a sense of frustration in men's minds and thus tend to undermine their willingness to give time and effort to the study of a bill.

On the other hand it is legitimate to ask whether the fullest use was made of the time actually available for discussion. In committee on the Iron and Steel Bill, for example,

¹ The system thus involves a series of guillotines. For example, the guillotine may fall at the third sitting on Clauses 1-7, even though only Clause 3 has been reached; then at the sixth sitting on Clauses 8-13, and so on.

the first guillotine fell at the end of the eighth sitting with two clauses and forty-two amendments undiscussed and one clause inadequately discussed. Yet part of the explanation may be attributed to the way in which the Opposition lingered over the opening clause.¹ A considerable amount of time, too, was spent by the Opposition in trying to get extra time for discussion.² This kind of action is natural enough and could hardly be labelled obstructive, but it certainly does not facilitate debate. Certainly, the total number of hours the Committee had and the bulkiness of their proceedings as reported in the *Committee Hansard* (1786 cols.) suggest that there was ample time for discussion.³

It is obvious that if ill-feeling is to be avoided under the guillotine procedure, two conditions must be reconciled and fulfilled: the Government must allow reasonable time for debate and the Opposition must try to use the time available to full advantage. Indeed, a great deal depends on the Opposition. For either they can have a leisurely discussion on every point that arises or they can concentrate in business-like fashion on the main ones. There is always a tendency to linger longer than is necessary over clauses or amendments in which there is fair measure of agreement, just as there is a tendency for several Members in succession to advance substantially the same arguments in different forms. It is certainly noteworthy that where there is a genuine spirit of conciliation on both sides discussion proceeds smoothly and rapidly.

¹ Even assuming that Clause 1 (the set-up and structure of the Iron and Steel Corporation) was the most important clause in the bill, discussion of it took much longer than similar discussion in the case of other bills. Each sitting, it should be remembered, provides the opportunity for from 2½ to 2¾ hours' discussion. The seventh sitting, which was devoted to the motion that Clause 1 stand part, produced a very general discussion covering principles already decided at Second Reading and points discussed in the first six sittings. This was done, too, in full realization that only another sitting remained for the discussion of Clauses 2, 3 and 4.

² About 1½ hours during the first sitting, e.g., and about one hour during the fourth sitting.

³ For a humorous mathematical estimate of this point, see the Report of Standing Committee C on the Iron and Steel Bill, Cols. 313-4.

And there is another point. Discussion in standing committee generally takes place on a fairly high level, but even so, valuable time can easily be lost through repetition and irrelevance—weaknesses incidental to human frailty—and also through the inherent inability of many Members to make their points without at the same time making speeches. The idea of limiting speeches to (say) five or ten minutes has never been acceptable to the House, but it might prove an extremely useful device.

At all events it is clear that under present circumstances some method of limiting debate is necessary if the desired legislation is to be passed. In this connection, however, would it be unreasonable to hope that with time and with the passing of a period of great social strain both Governments and Oppositions will come to achieve a new harmony? In the last Parliament both the Government and the Opposition were playing relatively unfamiliar roles.

Fortunately, too, all bills are not of such a highly controversial nature as the nationalization measures we have been considering. Even in an exceptionally difficult period such as that through which we have been passing there are many bills which are not controversial in the party sense and where a great deal of harmonious discussion takes place and useful amendments are introduced. One may cite as examples here the Development of Inventions Bill, or the Education Bill.¹ To what extent, however, bills are reshaped in this way we cannot yet say with any exactness. Crude figures of amendments passed do not tell us much, since amendments are not homogeneous units but vary by degrees from minor drafting amendments to amendments of real substance. Incidentally, in estimating the value of discussion in standing committee it is necessary also to look into the report stage of bills, because many amendments included at this stage are first proposed and discussed in standing committee. The changes which the Iron and Steel Bill underwent in report stage, for example, were substantially those which arose from the committee proceedings.

¹ A full list of the bills considered by standing committees can be seen from the Standing Committees Returns, issued at the end of each session.

One innovation which has not yet been tried, though often suggested, is that standing committees be made "specialized". This proposal commonly assumes different forms. Most simply, it may mean that we should replace the partially specialized committees which we have at present with committees in which all the Members are presumed to have some special knowledge. A committee dealing with an educational bill, for example, would consist exclusively of "experts" in education. But even apart from the practical difficulties associated with the choosing of "experts" it seems highly questionable whether this would be desirable. In the preparation of legislation there is already a fair degree of prior consultation with experts, both inside and outside the Departments. What is wanted of a standing committee is not that it should try to be as expert as the experts, but that it should bring expert opinion into some kind of balance with the opinion of the general public. A non-specialized nucleus helps it to perform this function.

Another proposal that is sometimes made is that standing committees should be permanent bodies, specializing broadly in certain types of bills. This suggestion was put both to the 1931-2 and to the 1945-6 Select Committees on Procedure by the then Clerks of the House. In the latter case Sir Gilbert Campion proposed¹ that apart from the Scottish Standing Committee there should be two large standing committees consisting of seventy-five to a hundred Members. Each of these would be divided into three sub-committees of twenty-five Members each. When a bill had its committee stage referred to standing committee it would go, not to the parent committee, but to one of the sub-committees which would be reinforced by fifteen Members in respect of each bill. When the bill had been considered in the usual way it would be reported not to the House but to its parent committee, which would then consider the bill in the same way as the House does at report stage.

The Select Committee, however, was not persuaded. The proposal for removing the report stage of a bill from the floor

¹ Memo., para. 26.

of the House was rejected, mainly on grounds of principle. Nor was the idea of permanent standing committees looked on with favour. In evidence before the Select Committee Campion had maintained that the purpose of having this "very wide kind of specialization"¹ was to secure something of a corporate spirit among Members. While admitting that a moderate degree of group consciousness makes for greater efficiency in a committee, it seems doubtful whether much could be achieved in this direction. Where party issues are not involved there is already something of a corporate spirit among Members of a standing committee. Where bills, however, are highly controversial in the party political sense, it is difficult to see how partisan attitudes could be effectively eliminated. One well remembers the "solid phalanx" of party support which Mr. Gaitskell received during the committee stage of the Gas Bill. Furthermore, if committees became specialized in this way there is always the possibility that some may be overworked while others had little to do. Sir Gilbert Campion maintained that if past experience were any guide, the work to be allotted to the main committees would be likely to fall to them in roughly equal proportions. But there is no certainty about this, and in so far as it was not so different committees would find themselves suffering from varying degrees of over- or under-employment. By contrast, it is one of the merits of the present system that a high degree of flexibility is secured.

Although standing committees on the Campion model would be permanent and specialist, their actual functions would still be limited, as at present, to the detailed examination of public bills. For this reason they are to be distinguished from the powerful specialized committees found in America and France. Some writers, however, have suggested a root-and-branch remodelling of our whole committee system broadly on the American or continental pattern. This suggestion may be met by the following observation. The House of Commons can, in principle, divide up its work among committees in either of two ways: it may do so functionally or it

¹ § 2565.

may do so departmentally. If functionally, each committee or group of committees would concentrate on a certain function common to all departments of government; if departmentally, each committee would carry out several functions within a particular department. The departmental method has worked in America, where committees carry out a wide range of functions within a particular department. On the other hand there has grown up in this country a division of labour on functional lines: standing committees specialize in the examination of public bills, the Public Accounts Committee and the Estimates Committee in the study of finance, the Statutory Instruments Committee in scrutinizing delegated legislation, and so on throughout our whole committee system. This has proved itself an extremely adaptable system, and within the life of the last Parliament Standing Committees, the Estimates Committee and the Statutory Instruments Committee (to take three examples) increased both the amount and the scope of their work. There is certainly no *prima facie* reason to assume that the departmental division is more efficient than the functional one as it operates in this country today.

At least it can be said that the British system escapes one major difficulty of the American or continental system—the possibility of strain between an important committee and the Cabinet. It is not inevitable, of course, that permanent, specialist standing committees would become as powerful in this country as in America or France. In America this has been largely the result of a constitutional system which keeps the Cabinet outside the Legislature, while in France the weakness of the Cabinet has its roots deep in French history; neither analogy is valid. Nevertheless, the possibility of friction does exist. In some countries, of course, it is believed that this is, in itself, a good thing. In this country, however, it is generally felt that the need for parliamentary criticism of the Government has to be balanced against the need for a strong and responsible Government to carry out an effective policy.

THE AMERICAN GOVERNMENT—VI

This is the sixth and last extract from Our American Government: What Is it? How Does it Function? compiled by Representative Wright Patman and published by the United States Government Printing Office. Earlier issues of Parliamentary Affairs have included extracts relating to the Constitution, elections, and the States (Autumn, 1948), the Capitol, Government Printing, the Congressional Record, the Library of Congress, Patriotic Symbols, and the National Anthem (Winter, 1948), the Executive Branch (Summer, 1949), Congress and its Committees (Autumn, 1949), and Procedure in Congress (Spring, 1950).

Question: Who presides in the House?

Answer: The Speaker of the House. The Speaker may appoint a Speaker *pro tempore*, but not for more than three days at a time without the consent of the House.

Question: Who presides over the House when Congress first meets and before a Speaker is selected?

Answer: The House rules provide that the Clerk shall, at the commencement of the first session of each Congress, call the Members to order, proceed to call the roll of Members by States in alphabetical order, and, pending the election of a Speaker or Speaker *pro tempore*, preserve order and decorum, and decide all questions of order subject to appeal by any Member. Although the rules are not in force at the time of organization of a new House (since one House cannot bind a future House, the rules are adopted for each Congress and usually not until after the election of a Speaker) the procedure in practice conforms to the terms of the rules of the preceding Congress.

Question: What are the duties of the Speaker of the House?

Answer: He presides over the House, appoints the Chairmen to preside over the Committees of the Whole, appoints all special or select committees, appoints conference committees, has the power of recognition of Members, and makes

many important rulings and decisions in the House. The Speaker may vote, but usually does not, except in case of tie. The Speaker and the majority leader determine administration policies in the House, often confer with the President, and are regarded as spokesmen for the administration in power.

Question: What are the duties of the whips of the House?

Answer: The whips (of the majority and minority parties) keep track of all important political legislation and endeavour to have all Members of their parties present when important measures are to be voted upon. When the vote is likely to be close they check up, find out who is out of the city, and advise absentees by wire of the important measures coming up.

The office of whip is unofficial and carries no salary or perquisites except that each whip as such is allowed a messenger for his office.

Question: What is the steering committee of the House of Representatives?

Answer: The steering committee is composed of a varying number of the leading majority Members, chosen by the majority caucus, to exercise supervision over the handling of business by the House. Sometimes the committee is made up specially; sometimes it consists simply of the majority members of one of the great standing committees. The committee's main function is to select from the large number of bills on the House calendars those which the majority managers wish to advance to final consideration.

Question: How does a Member of the House of Representatives obtain recognition from the Speaker to address the House, and how long may he speak?

Answer: When any Member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the House, or any particular Member, but to the Speaker.

Question: What is a quorum?

Answer: In the House of Representatives a quorum is a majority of the membership. When there are no vacancies in the membership a quorum is 218. There are usually a few vacancies—Members who have died or have resigned and their places yet unfilled. Much business is transacted without a

quorum. But no business of any character, except to adjourn, can be transacted without a quorum present if any Member objects. All any Member has to do to get a full House is to arise, address the Speaker, and make the point of order that "no quorum is present". The Speaker says, "The Chair will count". If he cannot count a quorum present, the doors are closed, the bells are rung in the corridors and House Office Buildings (three rings indicate a call of the House), and the roll is called. This usually produces a quorum.

Question: How are votes taken in the House?

Answer: In four different ways. Usually the Speaker puts the question in this form: "As many as are in favour [of the motion] say 'Aye,' " and then, "as many as are opposed say 'No'." In most instances the vote taken is decisive enough to satisfy. But if the Speaker is in doubt, or if it sounds close, any Member may ask for a division. In this case the Speaker asks those in favour to stand up and be counted; then those opposed to the proposition to stand up and be counted. The Speaker does the counting and announces the result. But if he is still in doubt, or if a demand is made by one-fifth of a quorum—that is, twenty in the Committee of the Whole or forty-four in the House—tellers are ordered. The Speaker appoints one gentleman on each side of the question to make the count. The two tellers take their place at the head of the centre aisle. All Members favouring the proposition walk through between the tellers and are counted. Then those opposed walk through and are counted.

But a roll call may be demanded by any Member on any question in the House, and if supported by one-fifth of those present it is ordered. This privilege is guaranteed by the Constitution. The Clerk reads the names of the whole membership, and as his or her name is called the Member answers "Aye" or "No". The names of those not voting the first time are read a second time, so that all Members in corridors, cloak rooms, committee rooms, or offices, who have been notified by signal bells, may come in and vote.

Question: What filibustering tactics are possible in the House?

Answer: Forcing roll calls is about the only method of filibustering left under the rules of the House, and when the Rules Committee brings in a drastic rule prohibiting the offering of amendments or considering the bill for more than a certain number of hours, even that method of filibustering is impossible.

Question: Why must tax bills originate in the House?

Answer: The constitutional provision (all bills for raising revenue shall originate in the House of Representatives; art. I, sec. 7) is an adaptation of the English practice. The principle involved, and which had been established in England after long struggle, is that the national purse strings should be controlled by a body directly responsible to the people. So when the Constitution was formulated, as Members of the Senate were to be chosen by the several State legislatures, the initiation of revenue legislation was restricted to the House, where the Members were subject to direct election every two years. However, the Senate has had from the start full power to amend revenue legislation.

Question: Must all appropriation bills originate in the House?

Answer: There has been considerable argument and difference of opinion as to whether "bills for raising revenue" includes appropriation bills. But it is uniform practice that the general appropriation as distinguished from special bills appropriating for single, specific purposes, originate in the House.

Question: Who presides in the Senate?

Answer: The Vice President of the United States. He is referred to in the Senate as "Mr. President," because his title in that body is President of the Senate.

In absence of the Vice President the Senate elects a President *pro tempore*, who holds that office during the pleasure of the Senate and presides during future absences of the President until the Senate otherwise orders.

Question: How does a Member of the Senate obtain recognition from the President of the Senate and how long may he speak?

Answer: When a Senator desires to speak, he shall rise and address the Presiding Officer and shall not proceed until he is recognized, and the Presiding Officer shall recognize the Senator who shall first address him.

Question: What method does the Senate have for meeting a filibuster?

Answer: In 1917 the Senate adopted what is called a "cloture rule" as a part of the Senate rules. It provides that the Senate may end debate by a two-thirds vote. When sixteen Senators file a petition asking to end debate, the Senate must vote on the petition at 1 p.m., the second calendar day thereafter. If two-thirds vote for cloture, then no Senator may talk longer than one hour on the bill. So long as one-third of the Senate is opposed to cloture, it is impossible to end a filibuster if enough Senators are willing to talk in relays.

Question: What are Executive orders?

Answer: Executive orders are issued by the President, and are in general of two kinds:

(1) Those which prescribe general regulations for the practical operation of an act of Congress;

(2) Those which direct some detail in the administration of the Government, e.g., the establishment of a wildlife refuge at a particular place, or the exemption of a designated person from some requirement of the civil-service laws.

Question: Does a Presidential proclamation have the force or effect of law?

Answer: It has been held by the Supreme Court that an amnesty proclamation (25th December, 1868) had the force of law. In recent times Congress has in many instances enacted a law provisionally empowering the President to determine and proclaim the existence of conditions upon which the act becomes effective. A proclamation thus issued by specific authority would certainly have the effect of law; in fact, Congress often has prescribed penalties for a violation of the terms of such a proclamation—which could only be on the assumption that a law was involved.

Question: What cases may be brought originally in the Supreme Court?

Answer: Under the Constitution the Supreme Court has original jurisdiction (i.e., it is the Court in which proceedings may be brought in the first instance) in cases affecting ambassadors, other public ministers and consuls, and cases in which a State is a party. In all other cases coming within the judicial power of the United States, the Supreme Court's jurisdiction is only appellate, and is subject to exceptions and regulations by Congress.

Question: What is the difference between opinions and decisions of the Supreme Court?

Answer: An opinion is the statement of the reasoning by which the Court fortifies a decision in a particular case. The decision is reached by secret vote of the Justices, and the Chief Justice then assigns a Justice the task of writing the opinion.

Question: Does the Supreme Court render advisory opinions?

Answer: No. A case *de facto* must actually come before it from an inferior court. Its decisions are all factual—not theoretical.

Question: Can a private citizen challenge the validity of a constitutional amendment?

Answer: In challenging a constitutional amendment, as in challenging the validity of any Federal law, there must be a proper case brought by a proper party. In general this means that the person suing must have a direct personal interest; he may not sue "vicariously" on behalf of others. And very definitely, one citizen cannot, simply on that basis, challenge the validity of a law, without showing a right infringed, etc.

Question: How long has the Supreme Court had a building of its own?

Answer: Not until recently did the Supreme Court have separate quarters that it could call its own. On 7th October, 1935, the Court held its first term in the new building at First Street and Maryland Avenue, N.E. Before that it had occupied various rooms in the Capitol, and for a period of years following the burning of the Capitol had used the resi-

dence of the Clerk of the Court, Elias Boudinot Caldwell, at Second and A Streets, S.E.

Question: What is the mace, and what is its significance?

Answer: The mace is the only visible symbol of Government authority in the United States. It is an institution borrowed from the British Parliament, where it had become a traditional symbol of parliamentary authority. This symbol was adopted by the House of Representatives by resolution of 14th April, 1789—there is no mace in the Senate. The present mace dates from 1842; it is a reproduction of the original which was burned in the Capitol in 1814. It consists of a bundle of ebony rods bound with silver and terminating in a silver globe, surmounted by a silver eagle with wings outspread. The Sergeant at Arms is custodian and charged with its use when necessary to preserve order.

Question: How can any citizen get his views considered by Congress?

Answer: The Constitution of the United States provides that "Congress shall make no law respecting . . . the right of the people peaceably to assemble and to petition the Government for a redress of grievances". A special place is set aside in the Congressional Record each day for petitions which may be filed by a Member and referred to the appropriate committee for consideration. The notation in the Congressional Record recites the name of the Member offering the petition, the name of the petitioner, and a brief summary of what the petition contains.

Question: Are visitors and representatives of the press allowed to listen in on the proceedings of Congress?

Answer: Yes; in both Houses places are provided for them in the galleries. A special place is set aside for accredited members of the press and is referred to as the "press gallery". Visitors are subject to control by the presiding officers of the two Houses, and the galleries may be cleared in case of disorder. In the Senate Chamber the galleries are cleared when the Senate goes into executive session.

BOOK REVIEWS

The Principles of Parliamentary Democracy. By C. E. M. Joad. Falcon Press. 5s.

This is an important book if only because it sets out clearly, simply, and in a concise form the fundamentals of parliamentary democracy and provides a yardstick by which the attainment of the democracy may be judged.

The plan of the book consists of six chapters, each dealing with a principle of democracy. The division, as the author would admit, is in a sense artificial, for without one of these principles it would be difficult to assert that democracy did, in fact, exist.

The first three principles, however, hang together as definitions of the objects of democracy; the last three as the means by which these objects are achieved. The first three principles are: "The individual citizen is an end in himself." "The state is a means to the well-being of its members." "Only the wearer knows where the shoe pinches."

Politics, says Joad, are not concerned with States, Governments, Parties, classes and institutions, but with individual men and women, who are born into the world, grow up, get jobs, fall in love, marry, have children, get promoted, go to football matches, make merry with their friends, fall ill, and die.

The test of the excellence of the democratic, as opposed to the totalitarian, system is the extent to which the Government succeeds in satisfying the wants of men and women, not in the glorification of the State. This is worth the attention of all political parties. The unit in a democracy is not a class or a group, but the individual.

It is this recognition of the individual as the unit which brings democracy and Christianity so closely together, for the individual soul being immortal, class, groups and even nations being ephemeral, the task of a temporary institution like a government is to ensure the well-being of the individual in this world and assist his salvation in the next.

The author then clearly, and impeccably, sets out his fourth principle, that Government should be representative and that changes of Government should be by consent. But having thus stated it there are many who will, perhaps, disagree with some of his assertions. Thus, he comes down heavily against proportional representation, notwithstanding the fact that such a system must give a fuller representation than our present one. He surprisingly uses the old arguments that proportional representation produces unstable governments and tends to a multiplication of Parties. Such dogmatism is not justified by experiences in Sweden, Norway and Eire, and it would be a pity to suggest that there is not another side to this admittedly controversial question.

He denies that Parliament is an unsuitable body for law-making, or that its methods are too slow, and produces as evidence the volume of legislation passed through both Houses since 1945. Some might well hold the view that such a volume overstrained the capacity of Parliament and that the quality and clarity of such laws as that dealing with Town and Country Planning, good as they were in intention, suffered seriously in diminished quality through lack of care both in drafting and discussion.

The fifth principle, that democracy implies freedom, is self-evident, but Joad's championing of direction of labour, even as a temporary measure, must be challenged. The absence in this chapter of any reference to the U.N. Declaration of Human Rights is most noticeable.

There is, to round off the book, a chapter on the independence of the judiciary, a principle which daily distinguishes democracy from the system behind the iron curtain, and a further chapter on Democracy and Human Nature.

To sum up, this is a valuable and eminently readable book of some 71 pages. With certain modifications it should, in my view, be translated into many languages, for its effect abroad might well be considerable.

FRANK BYERS.

(Mr. Frank Byers, O.B.E., was a Liberal Member of Parliament from 1945-50.)

Authoritarianism and the Individual. By Harold W. Metz and Charles A. H. Thompson. The Brookings Institution, Washington. \$3.50.

This seems to me a very strange book. It is hard to see how all the things in it found their way there. There is room for a book which would take the modern situation, with its reaction against democracy and liberty, and examine the way in which Fascism, Nazism, and Bolshevist Russia control the individual. It would also be possible to consider the relation of Society and the individual in times before the appearance of the notion of the Democratic State. Professor Powicke, for example, has done something like that in his "Riddell Memorial Lectures". But it seems to be only confusing to have one book which, after discussing briefly "The Rights considered fundamental to the State", then proceeds to examine Feudalism, the Sixteenth Century State, Communism, Fascism, and Nazism, and then, to one's surprise, "The Idealistic Controlled Communities in America", Mennonites, Shakers, and various other funny religious communities which exist in the United States like flies in amber. If Feudalism and the Mennonites, why not the Society of Jesus?

A book about these Communities would be quite interesting, something which would explain their remarkable persistence in modern society, but the whole spirit behind them, the whole moving force of them, is so different from the moving force of the modern state, that it cannot be brought into the main context of this book.

Or take again the problem of mediaeval society. Its liberties—for there were liberties—its methods of ensuring the personality of the individual, were so different that it says almost nothing about feudalism to explain what modern rights it did *not* have.

I think what is wrong with the book is that its authors have no real sense of history. Several books might be written out of the material which has been put into this one. These materials just won't go into a single story or subject.

LINDSAY OF BIRKER.

(*Lord Lindsay of Birker is Principal of the University College of North Staffordshire.*)

A Primer of Public Administration. By S. E. Finer.
"Man and Society Series". Muller. 6s.

While it is not true, as the dust cover suggests, that this publication covers its subject "as a single theme for the first time", Mr. Finer's little book is to be welcomed. It is a thought-provoking addition to a study field that has not hitherto been well served. As a subject Public Administration presents two great difficulties: it is hard to define and is concerned with practice rather than theory. Consequently every writer on Public Administration seems to have a different conception of its content.

Of the importance in a democracy of an understanding of this subject too much cannot easily be made. If the people and Parliament are to exercise proper control over the Executive, the problems of public administration must be more and more widely discussed and understood. The danger is that, with the growing complexity of administration as an essential activity in modern affairs, the nation will become less and less competent to adjudge the practical limits of the policy it is desired to implement, while the public official himself, having no outside guide to keep him on the proper rails, will more and more tend to confuse mumbo-jumbo with practical management. We need a more precise understanding than we have at present of the inner logic of this vital but somewhat uninspiring activity.

The present book outlines the cabinet system and the general structure of the executive side of the Government; it touches upon services and areas and upon some general aspects of public service personnel and ends with a brief discussion of the important topic of public accountability. Thus it is almost entirely concerned with, what might be termed, the political aspects of public administration. But even here scant attention is given to such an important and controversial institution as the public corporation. About the managerial or purely administrative aspects of public administration little is said. For example, while the Administrative Class, as usual, receives due attention, little is said about the rest of the Civil Service, e.g., the problems of the Service's managerial

classes, about internal control or organization, or Civil Service methods. In truth, the author has not the space and it would be churlish to blame him for failing to achieve the impossible.

Sometimes in seeking the telling phrase Mr. Finan is apt to mislead. Thus, on page 91 he states as a notable singularity, "If a central department is mismanaged, the Minister goes and the permanent head stays. If a local authority's Department is mismanaged, the Committee stays and the permanent head goes!" This is only true if in the first instance "mismanaged" refers to "policy" and in the second to "administration". The Civil Service head who fails in administration can be moved, even as the local committee that pursues an ineffective policy can be removed. In a book quoting so many facts, errors are bound to occur, but there is a sentence on page 69 referring to the agency work of other departments for the Ministry of National Insurance that calls for a major operation!

Mr. Finan writes vigorously and provocatively. Used with discretion his book will most certainly be a boon to lecturers. But it assumes too much prior knowledge and omits too much that is of first importance to justify the inclusion of "Primer" in the title. With this proviso the publishers are to be congratulated upon inaugurating what promises to be a useful series with such a stimulating book; they are also to be congratulated for keeping down the price to a figure within the reach of the ordinary student, but they should remember that a book without an index is a blunt tool to both student and lecturer.

E. N. GLADDEN.

(*Dr. Gladden is the author of "The Civil Service: its problems and future" & "An Introduction to Public Administration".*)

British Politics Since 1900. By D. C. Somervell.
"Twentieth Century Histories". Dakers. 15s.

Mr. Somervell speaks modestly of the scope of his book. "Such politics lie along the surface of history and we have not often ventured to probe the depths below them" (p. 264). It

is true that Mr. Somervell has not attempted to write a history of British thought in this period or to deal with intellectual and social movements save in so far as they affected or were affected by party politics. It would be unfortunate, however, if his modesty prevented anyone from reading this singularly interesting and attractive book. For better or worse, under such a constitution as ours, the test of a movement of thought is the extent to which it makes itself felt in the House of Commons. It is not the best possible test; some shallow movements pass it and some movements of greater merit fail to pass it; but it is inherent in the system we live by, and the alternatives to that system are either impracticable or repulsive. The study of political forces, then, is a natural and proper one.

Mr. Somervell brings to it such a wealth of perspicacity that a reviewer is tempted to confine himself to a series of quotations. Perspicacity, of course, is not the same thing as comprehensiveness and there are one or two instances in which a reader is scarcely supplied with all the information he needs. The account of the genesis and effect of the Trade Disputes Act of 1906 (p. 56) is inadequate and the report of the Dunedin Commission, essential to an appreciation of that Act, is not described. Again, it is arguable that the Irish Convention of 1917-18 is too summarily dealt with (p. 120). Certainly, the attitude of the Ulster Unionists needed mention and there would have been no harm in giving a brief summary of the Convention's report. It is arguable, also, that more attention might well have been paid to the legal and constitutional background of politics, to the growth of delegated legislation, for example, to developments in local government, and to changes in parliamentary procedure.

When all this has been said, the book remains an excellent one. Its excellence is very far from being the mere product of caution or of an anxiety to make only such statements as will command a general, though tepid, assent. On the contrary, Mr. Somervell makes his opinions crystal clear. What entitles them to consideration always and very often to acceptance is their "roundness", the sense they give that a

particular subject or a particular man had not one but many facets. It is the men, the politicians, in whom Mr. Somervell is primarily interested. He has not chosen to write a history of party organizations. His method, on the contrary, implies a considerable concentration of attention on the personalities of party leaders; and it is probably his biographical assessments which will make first claim upon his readers.

Here are a few selections. Asquith: "The greatest master in his generation of the arts of lucid exposition and destructive criticism . . . an unsensational figure, called upon to take the lead in sensational times" (pp. 62-63). Austen Chamberlain: "He had not an original nor perhaps even an interesting mind" (p. 140). Ramsay MacDonald: "He was a natural coalitionist, continually seeking and finding contacts outside his class, for he was a classless man, a nobleman by instinct, a bourgeois by habit and a proletarian only by origin" (p. 153). Baldwin: "No statesman in peace time since Palmerston had come so near being a national and not a mere party leader" (p. 172). "No British prime minister ever disliked foreign affairs so much. . . . He brought his mind to bear on them only as a dire necessity and with extreme reluctance" (p. 221).

It would be thoroughly inaccurate, however, to suggest that Mr. Somervell has no more to offer than a series of biographical sketches. He performs the essential duty of the historian in showing not merely the alternatives between which a particular statesman had to choose at a particular time and his equipment for exercising his choice but also the implications of those alternatives as seen in retrospect. This sense of background and continuity can be illustrated by two quotations. On syndicalism Mr. Somervell remarks how "it has still left its traces on the working man's conception of what a 'nationalized' industry ought to be and explains the disappointment of, for example, the miners of 1946-50 when they discovered that, after a Socialist government had nationalized the mines, they no more owned and controlled them than they had done before" (p. 86). And, again, on the successes of MacDonald in foreign policy: "As one looks back

on these events after a second German war one does not feel very greatly exhilarated but that was not the mood of the time. The men of 1924 felt as we should feel in 1950 if the 'iron curtain' were drawn aside" (p. 158). Deeply sensitive as he is to the *nuances* of character and personality Mr. Somervell is continuously aware of the way in which, in the past fifty years, men have been increasingly dwarfed by events. His urbanity has an undertone of pessimism and at times it seems to be the "cosiness" of party politics which appeals to him. "A record of fifty years of British party politics creates an illusion of stability in a changing world" (p. 263). His admiration for Mr. Churchill is based on the belief that he alone, in this "fascinating diversity of political events and political characters", grew in stature with the forces and dangers of his day.

W. L. BURN.

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Modern Foreign Governments. By F. A. Ogg and Harold Zink. Macmillan. 45s.

American higher education suffers from an over-reliance on the textbook method of instruction; but this has a compensatory advantage in that the textbooks produced tend to be good ones. And in a subject such as political institutions, which is far more widely and systematically studied in the United States than in Great Britain, there has been something of a tendency to rely, if rather shamefacedly, upon such American works as the predecessor to the present one—Professor Ogg's *European Governments and Politics*. And there will be a warm welcome for the new version.

The primary purpose of the work is to give a picture of the working of government in a number of important and representative countries so as to permit a comparative study of their political institutions and of those of the United States itself, which is, of course, excluded from the scope of the work. The plan does not therefore demand either completeness or an equality of treatment of all the countries dealt with. Thus 400 pages

are given to the United Kingdom and Commonwealth with another 20 for Canada as a "typical" Dominion, nearly 200 pages to France, almost as much to Germany, over 100 pages for the U.S.S.R., with shorter chapters on Norway, Sweden, Argentina, and Japan. At a time of rapid constitutional development, or in the case of France with a new Constitution to study whose working-out in practice is not yet altogether clear, the authors have had a more difficult task than their predecessors for some time. And there is a tendency to preserve as easier to describe a great deal about the Third Republic and even the Weimar Republic which some might regard as mainly of historical interest. But this of course only raises the wider question of the relation between historical and descriptive methods in this field. It is perhaps a more acute problem for American writers since the development of "government" as a separate study seems to mean that an adequate historical background on the part of the student is not to be expected; and the author of a textbook such as this must take it upon himself to fill the gap as best he can. This can present problems which would baffle masters of the art of compression; and the breathless attempt to chronicle here in less than twenty pages the history of the Russian revolutionary movement and of the establishment of the Soviet regime cannot be described as altogether successful.

But the problem does not only arise over purely introductory matter. In the case of a regime which has evolved as rapidly as has that of the U.S.S.R., it is very difficult to deal with any aspect of it descriptively, and there are places where it is not clear whether certain features described refer to the state of affairs at the time of writing or at some previous period. It is a pity from this point of view that a little more thought has not been given to revising the bibliographical footnotes which, although very largely confined to works published in the U.S.A., are a most useful part of the work. There are cases here where the unwary student may go to a work which is now only of relevance to conditions at the time of publication. In dealing with the U.S.S.R. the authors would have risked little by giving some indication as to whether

the works they refer to are representative of an official Soviet viewpoint, of a fellow-traveller attitude, of disinterested scholarship, or frankly of hostile intent. All these kinds of books have their value; but the student should hardly be left to classify them for himself, or find all but the first lumped together as "objective".

British readers may find it most interesting of all to see what these American authors make of our own institutions, and though some may resent the statement that Britain "has fallen from a top-flight position to a secondary rating among world powers", the account of current institutional and political trends seems particularly fair. There is hardly a trace of the belief still so widespread among the general American public that Britain in some occult way still rules or even exploits the Dominions; but possibly the authors lean over too far the other way, and give too little space to the positive aspects of the Commonwealth relationship. There are one or two judgments at which some sceptical eyebrows may be raised. I doubt whether it is "the commonly accepted view" that the Allied cause was helped rather than hindered by Irish neutrality in World War II. The story of the war at sea does not bear this out. Of less significance is the repetition of what one had thought was a long-exploded belief, namely that Scotland as compared with England has a "very superior system" of public education.

Both in this, and in other sections of the book, a high standard of accuracy is maintained, but there are one or two astonishing lapses; Paul Reynaud appears as a "radical socialist"; is described as including General de Gaulle in his Cabinet at the same time as Marshal Pétain, which is incorrect, as de Gaulle became merely an under-secretary; and is said to have had to defend his Cabinet against the charges of appeasement "associated particularly with such suspected members as Pierre Laval, Pierre [for Pierre-Etienne] Flandin and Georges Bonnet", none of whom were included in it.

It is perhaps natural that Americans should not feel obliged to be up to date in their views about George III; but the few lines on him suggest that no attention whatever has been paid

to the Namier-Sedgwick revision of the period's history, and the old argument as to whether the monarch gloried "in the name of Britain" or "in the name of Briton" is hardly solved by a new version here, that he "gloried in the name of Englishman".

Two sections of the book relate to a new aspect of the study of political institutions—the recreation in Germany, and the modification in Japan, of political institutions by an alien occupying power or powers. It is when subjects of this kind are tackled that one begins to get the feeling that politics as an academic study is something more than simple description, and it makes one feel (without lacking respect for the work put into this book by its eminent authors) that they could have been a little bolder elsewhere in tackling problems rather than things. It would need very good teaching at times to breathe life into these dry bones. American universities are fortunate indeed if they can rely on it always being forthcoming.

MAX BELOFF.

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American Administrative Law. By Bernard Schwartz, with a foreword by Professor E. C. S. Wade. Pitman. 25s.

Last year in his *Law and the Executive in Britain* Dr. Bernard Schwartz, assistant professor of law in the New York University, expounded to Americans the British developments in departmental law-making and departmental adjudication. Now, in his *American Administrative Law*, published in England, he expounds to an English audience the corresponding developments in the United States. The two books are complementary compilations; they tend to cover the same ground; occasionally indeed the pages of the later volume reproduce whole paragraphs of the earlier. If either country can teach the other how to make social progress without diminishing liberty and how to maintain what we variously understand by the Rule of Law, the labour is well spent.

We must not expect any easily imported safeguards against arbitrary action on the part of the Executive. We do

not possess a written constitution which guarantees fundamental protections. Our Parliament has the last word; our judges cannot declare a statute to be invalid. With us the Legislature and the Executive are not separated but fused. We returned in 1945 to the conditions of party politics in an intensive and well organized form which the United States do not know. Does anyone imagine that our Prime Ministers and Cabinets, whatever their party, would tolerate the imposition of fetters such as are imposed by the Federal Administrative Procedure Act which Dr. Schwartz holds up to us as a pattern? That Act would hopelessly retard and obstruct the subordinate legislation on which all Governments nowadays rely in Britain. It requires preliminary hearings which must "afford interested persons an opportunity to participate in the rule-making through submission of written data, views or arguments with or without opportunity to present the same orally in any manner"; it requires thirty days prior publication before operation, and it insists that the rule-making agency "shall accord any interested person the right to petition for the issuance, amendment or repeal of a rule".

Dr. Schwartz joins other American observers in allowing virtue to the British habit of requiring subordinate legislation to be laid before Parliament and exposing it to annulment on a "prayer" by any Member on the floor of the House. Inevitably, perhaps, he sometimes over-simplifies his comparisons. The United States agencies issue interpretative rulings which state what the department understands a particular enactment to mean. These have no statutory authority but are not lightly disturbed by the American courts. Dr. Schwartz likens them to the administrative "quasi-legislation" to which the *Law Quarterly Review* drew attention in 1944; but the instances then referred to by Mr. R. E. Megarry were more like variations of a statute evolved by departmental practice for convenience; our judges would probably have paid them scant respect. Elsewhere Dr. Schwartz unconvincingly suggests that the "hearing" technique associated with a rule-making body in America (valuable inasmuch as it enables individuals

and interests to be consulted) is "basically similar" to the process by which our Royal Commissions inform themselves of facts and opinions. Be that as it may, he has written a helpful book, and we shall look forward to reading the study of French administrative law upon which he is understood now to be engaged.

CECIL CARR.

(Sir Cecil Carr, K.C.B., K.C., LL.D., is Counsel to the Speaker of the House of Commons and is the author of "Concerning English Administrative Law".)

Municipal and Other Local Governments. By Marguerite J. Fisher and Donald G. Bishop. New York: Prentice-Hall. \$4.75

Five years after World War II, a resurgence of interest in American municipal government is evidenced by publication of numerous books. One of these has been contributed by two associate professors of political science at Syracuse University. The authors have stressed the problems of citizenship for present and future voters. The book is designed to create an awareness of municipal structure, politics, and administrative problems for the lay reader. Incidentally, the framework of other local governments, such as county, town, and village, has been treated. Attention is centred primarily on the municipality, which in the United States is generally separate in incorporation and powers from the county within which it is contained in the geographical sense.

To the English reader, American municipal structure must, indeed, seem like a hodge-podge, for there is no uniform system of county boroughs, counties, and boroughs. Virginia alone uses the device of the city-county systematically. As the authors point out, there are three fundamental types of municipal organization: mayor-council; commission; and council-manager. Mayor-council government bifurcates responsibility between a directly elected executive and the legislative body; the commission plan consolidates legislative and executive authority in a small council; and council-manager government, the most modern, overcomes the defects of commissions by using an appointed executive.

American municipal government is also varied by reason of the intense partisanship apparent in some cities and the growth of non-partisan traditions in others. The treatment of the political process in this book indicates how partisan politics and, in some instances, boss-rule have cast their intense forces into formal organization and administrative process.

Almost one-half of the text is devoted to the functions of cities: police, fire, public health, welfare, recreation, housing, public works and utilities, for example. In a brief compass, these principal operating departments are described and their problems indicated. As in similar American books, considerable attention is also paid to the auxiliary departments of finance and personnel which assist the municipal executive in management of the "line" or operating departments.

Throughout, emphasis is placed on the difficulties of sustaining citizen interest in American municipal government in the face of numerous federal, state and local primaries and elections. To encourage university students to become familiar with the actual operations of local government, the chapters conclude with outlines of projects to be accomplished at city hall and departmental headquarters. As the authors indicate, much remains to be done in encouraging American university graduates to run the risks of participation in local politics, while making a living in a competitive business economy.

ARTHUR W. BROMAGE.

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The South African Constitution. By Henry John May. Second edition. Cape Town: Juta. Obtainable from the Hansard Society. 49s.

This book was first published in 1935 under the title of *The Law and Custom of the South African Constitution*, by W. P. Kennedy (the distinguished professor of law in the University of Toronto) and H. J. Schlosberg (Solicitor of the Supreme Court of South Africa). With the change of the name of Schlosberg to May it now appears in an abbreviated second edition as May's *South African Constitution*.

The book was admirably planned. It must have involved an immense amount of work for it set out to fill a long-felt want and to do even more for South Africa than Quick and Garran have done for Australia, but it contained a large number of mis-statements. Realizing that a first edition is seldom free from errors the authors modestly wrote in their preface that they would "appreciate any communication drawing attention to errors and omissions" and at least one reviewer, after having drawn attention to some of the many errors and omissions, offered his assistance for future editions.

Unhappily exactly the same mistakes are repeated in the second edition. Here for instance is a glaring example on an important point of parliamentary procedure: on page 216 of the first edition it is stated that "the Governor-General's speech from the throne is usually 'taken as read', is discussed, and an address is made in answer to the speech". The speech is in fact invariably "taken as read" and had the author consulted the Standing Orders of the House he would have found that Standing Order No. 11 expressly precludes any reply or any discussion on the speech. This was pointed out in a review of the first edition in the *Cape Argus* of 26th March, 1935, and a copy of the review was sent to the author, yet exactly the same sentence is repeated on page 154 of the second edition.

Other glaring errors are repeated throughout the whole of Chapter VII on "Parliament at Work". The description of amendments that may be moved to a motion that a Bill be read a second time (p. 162) is in conflict with Standing Order No. 161 and rulings that have been given, while the statement that a Committee of the Whole House on a public Bill *must* "report progress" (p. 154) is incomprehensible to anyone who knows that the formula "to report progress" is only used to *defeat* a Bill in Committee. The description (p. 159) of the procedure to be adopted in "naming" a member for misconduct in Committee of the Whole House is also incorrect, as a reference to Standing Orders Nos. 93-94 will at once show.

Almost every page of this chapter needs revision; but perhaps one of the worst mistakes which has been repeated in

the second edition is the description of the financial business of the House of Assembly and the Senate which is given on pp. 160-161. In these pages sections 60 and 61 of the South Africa Act are quoted in full, but the clear distinctions drawn in these sections between "appropriation bills" and Bills which only appropriate moneys incidentally are overlooked with the most dire results. The same criticism applies to pp. 166-168, dealing with Joint Sittings on disagreements between the Senate and the House of Assembly. Here, too, the relevant section of the South Africa Act (section 63) is quoted in detail, but although the author confidently repeats that "the procedure is very simple and works easily and smoothly", he fails to appreciate the difficulties which have arisen and may again arise in the interpretation of the section.

In several ways the second edition calls for stronger criticism than the first. The author has obviously not kept abreast of the literature on the questions with which he deals. He not only quotes from early editions of works which have been revised since the book was first published but in his chapter on "Delegated Legislation" he has not even referred to the attention which the subject has received in the House of Assembly or by Select Committees which it has appointed.

It is perhaps too much to expect that the book will be withdrawn from circulation, but at least it may be hoped that it will not be confused with *May's Constitutional History* or *May's Parliamentary Practice*. The author of those two immortal works was Sir Thomas Erskine May, the renowned Clerk of the House of Commons (afterwards Lord Farnborough) who died in 1886.

RALPH KILPIN.

(*Mr. Ralph Kilpin, J.P., was until recently Clerk of the South African House of Assembly*)

Parliamentary Procedure in South Africa. By Ralph Kilpin. Second edition. Cape Town: Juta. London: Hansard Society. 21s.

A view from the gallery of the House of Assembly in the Union Parliament in Cape Town at once brings to mind the

House of Commons. The arrangement of the seats, the Speaker's procession, the Serjeant and the mace, the wigged clerks, all seem familiar. Great is the disappointment, therefore, when practically the whole proceedings occur in Afrikaans, and only occasional English speeches furnish tantalizing clues to the run of the debates. The great political controversies implied by the word *apartheid* fall outside the scope of this review, but it is permissible to hope that the grave problems which face South Africa will be peacefully resolved through Parliament.

The institution, at any rate, stands ready, and in Mr. Kilpin's book, first published in 1946, the excellent machinery of the Assembly is described. It is not always realized how ancient is the procedure used in the House of Assembly. Most of it is based upon the practice in vogue at Westminster when the old Cape Parliament was inaugurated in 1854; but other roots stretch right back to the original Dutch Council of Policy, of which the first meeting was held when Johan van Riebeeck, first commander of the Dutch East India Company's garrison, called his three sea captains into his cabin during an emergency on the voyage to the Cape in 1651. To this day the mace is kept in a box made from a thorn tree which was eighty years old when van Riebeeck landed.

Where South Africa does diverge from British procedure, she often appears to improve upon it. Whenever a Bill, for instance, has been amended in committee, it is reprinted for its next (Report) stage in a form which shows every amendment by means of brackets and underlinings. Again, although the confusing but useful British method of putting the question for an amendment to leave out words is retained, the Chair in every case explains to Members the precise effect of voting either way. For example, if it is proposed to leave out the word "immediately", the Chair says: "I put the question 'That the word "immediately" proposed to be omitted stand part of the motion.' Those in favour of *retaining* the word will say 'Aye', to the contrary 'No'." Most interesting of all, while in Britain the expert lawyers called "Parliamentary draftsmen" are permanent civil servants, employed by the Government

alone, to draft government Bills and supervise their passage through Parliament, in South Africa the Government draftsman is an officer of both Houses of Parliament, whose main duties are to assist Private Members to draft their own Bills and to scrutinize Government Bills. Were such an official to be appointed at Westminster he would not want for work.

The book is packed with other points of interest for the student of procedure, such as the use of time limits for speeches; the recasting of the principle of public Bills in select committees *before* second reading; and the device of Joint Sittings to resolve deadlocks between the Houses and to safeguard the famous "entrenched clauses" of the constitution, which were designed to protect such matters as the Native and Coloured franchise rights and the equality of the English and Dutch (including Afrikaans) languages.

Mr. Kilpin has contrived to make procedure as clear as it can be made. For his first edition he studied all the authorities and enjoyed many years of friendship and advice from the late Sir Lonsdale Webster, K.C.B., one of the ablest of recent Clerks of the House of Commons; in his second edition he has brought the subject entirely up to date to the end of the 1949 session of Parliament, with many additions, and improved type to facilitate the ready reference which is often so essential. When, for instance, on 10th May, 1950, the vote on an important amendment resulted in a tie and the Speaker gave his casting vote, and then, too late, an absent Member was shown to have been wrongly counted, the Clerk had to think quick and hard.

The importance of rules of procedure lies in the strength they give to the institution of Parliament if they are honestly followed; and a parliamentary spirit has fortunately developed even among Afrikaners in spite of all dissensions. The old Boer instinct to reach for the rifle when frustrated in council seems to have been transformed into a respect for parliamentary tradition and even a spirit of tolerance for the Opposition.

When Mr. Kilpin retired in June, 1950, he could regard his forty-five years of service to the Cape and Union Legislatures as a definite contribution to the success of Parliament in South

Africa. This book, the standard work on its subject, is a further memorial of which he may well be proud.

STRATHEARN GORDON.

(Mr. Strathearn Gordon is a Clerk in the House of Commons and accompanied Lord Campion on his recent tour of some of the Commonwealth Parliaments.)

Farewell to Parliament. By Leslie Blackwell. Pietermaritzburg: Shuter & Shooter. 7s. 6d.

Mr. Blackwell's book provides links with the past which help us to estimate the present tensions in South Africa in the light of a longer perspective. We see through the eyes of a United Party parliamentarian the growing expressions of dual-national consciousness which South Africa experienced under the Hertzog-Smuts alliance of 1934; the growing assertiveness of the Afrikaans section of white South Africa, which reached a climax with the outbreak of World War II; the delicacy of the situation at that time caused by the increasingly dictator-like methods of Hertzog; the unrealistic atmosphere in Parliament due to Hertzogian blindness in the neutrality issue and the slender majority which cast South Africa's lot, so nobly, into the defeating of Nazi aggression; and how even during the war unrealism prevailed in Afrikaans sections although the nation was committed to the allied cause; that it was only the tremendous tension produced by the Nazi advances that obliged South Africa under inspired men like Smuts, Hofmeyr and their team, of whom Blackwell was one, to shelve minor issues.

We are taken on a visit to Australia and New Zealand whither Smuts sent Blackwell in 1941 on war missions and we are generally given a valuable picture of a strained, but less acutely tense, period of the domestic growth of South Africa which prevailed before the General Election of 1948 when the Nationalist success brought Malan's administration into the fateful but slenderly held power it wields to-day.

This book is 'dated' because it represents the more optimistic attitude to which the 1948 Election dealt a rude blow; significantly absent from its pages are any serious references to racial and colour issues which the Nationalists are raising so acutely.

Its value lies in preserving a picture of a more normal phase in South African affairs, and encourages the hope that the whirling of time may yet bring South Africa through her peculiar complications to an era when those complications may again be administered in closer harmony with the movement of world thought. It speaks to us of a more human and less bitter attitude which has prevailed and encourages the hope that growing enlightenment may again bring a potentially great nation to a greater maturity within the framework of the comity of nations.

EUSTACE WADE.

(*The Rev. Eustace Wade, M.A., is
Rector of St. Saviour's, Cape Town.*)

Encyclopedia of World Politics. By Walter Theimer; edited, revised and enlarged by Peter Campbell. Faber. 30s.

This is a revised version of Theimer's *Penguin Political Dictionary*, which was first published ten years ago. It is intended to survey "the political terms, systems, trends, problems and watchwords of the contemporary world". Within the self-imposed limits of the authors, it can be recommended as a useful reference volume: it is of manageable proportions, and the production—except for the maps—conforms to the high standards we have come to expect from the House of Faber. The authors have compressed into less than 500 pages a vast amount of information. Mao Tse-tung and Mussolini, Magna Carta and Marshall Plan, Molotov and Morrison (Herbert), Machiavelli, Marx and Masaryk, all find a place. The articles on political theory could hardly be bettered. The book is wisely planned and competently executed. It is, moreover, up to date and includes an account of the General Election which took place in Britain only two months before the book was published.

The value of a work of this kind depends on the accuracy of the information given. It is not enough to be 99 per cent. accurate: indeed it is for the obscure fact that the average person turns to a book like this. It is questionable whether

an author and a reviser between them can be familiar, and deal authoritatively, with the whole complex field of international politics. One can admire the erudition and versatility of the present authors and at the same time note that the book is not free from inaccuracies. Many of the Asian names, for example, are printed incorrectly: the last Governor-General of India (p. 360), the Prime Minister of Ceylon (p. 96), the Ceylon Trotskyite party (p. 96), and the two Malay States of Trengganu and Selangor are spelled incorrectly. The capital of Korea is given as Soul (p. 252) and the first Prime Minister of South Korea, General Lee Bum-suk, appears as Lee Buk Suk (p. 253). Inconsistent spellings are used for several Chinese names, sometimes on the same page, (e.g., Chou and Chow, Kung and Koong, Chang and Chiang), and the section on Siam has a profusion of alternative spellings. The initials E.C.A. are made to stand for European Co-operation Administration (p. 145), and Clarence Streit's name appears as Strait (p. 164). There is an inaccurate reference (p. 142) to a Minister of State for Commonwealth Relations.

A lesser point of criticism—on which opinions will no doubt differ—is the relative space devoted to different entries. South Africa's Finance Minister gets twenty-three lines, and the description includes the words "Dr. Malan (q.v.)", but one searches in vain for the entry about Malan. Moral Rearmament gets more space than Attlee, Abd el Krim more than Mackenzie King. The Aga Khan gets forty-three lines, but Lord Samuel, President Einaudi, and M. van Zeeland (to take three examples) do not appear.

The book has undoubted merits, but if it is reprinted it is desirable that greater care should be taken over points of detail.

S. D. B.

The Voters' Choice: a Mass-Observation Report on the General Election of 1950. Art and Technics. 1s.

In February last Mass-Observation turned its batteries on to the general election with a view to elucidating the *reasons* behind voting. The selected victims were six hundred people

in six London constituencies. *Voters' Choice* is a pre-view of its findings. It is a lively and stimulating pamphlet, which will certainly sharpen readers' appetites for the fuller analysis. Any criticism at this stage would obviously be out of place, though one cannot resist expressing the hope that some of the enquiries, which in their present form are made to yield dubious conclusions—e.g., on meetings and leaflets—will be pushed further in the final analysis.

H. G. NICHOLAS.

(*Mr. Nicholas is a Lecturer in Politics
in the University of Oxford.*)

* * * * *

CORRESPONDENCE

Sir,

In his review of 100 *Facts on the Ballot Box*, Commander King-Hall says that "it would be possible to collect at least an additional fifty facts setting forth the merits of the majority system of voting". Would it? In that case, please would somebody do so?

If there is really so much to be said for the majority system, why is there an almost total lack of reasoned statements in its support? If its protagonists could produce fifty, or even five, genuine facts, why do they so often rely upon false "facts" such as that ancient myth about France?

Yours faithfully,

ENID LAKEMAN.

The Proportional Representation Society,
82 Victoria Street, London, S.W.1.

BOOKS RECEIVED

The inclusion of a book in this list does not preclude its review in a subsequent issue of Parliamentary Affairs. Any of the books in the list or reviewed on pages 576 to 597 can be ordered through the Hansard Society.

CHURCHILL, WINSTON S. *Europe Unite*. Edited by Randolph S. Churchill. Cassell. 18s.

CRISP, L. F. *The Parliamentary Government of the Commonwealth of Australia*. Longmans, in association with the Wakefield Press, Adelaide. 21s.

DAVIES, IVOR R. M. *Trial by Ballot*. Christopher Johnson. 8s. 6d.

DERRY, T. K., and T. L. JARMAN. *The European World: 1870-1945*. Bell. 20s.

Documents on European Recovery and Defence. Royal Institute of International Affairs. 8s. 6d.

DUGDALE, GEORGE S. *Whitehall through the Centuries*. Phoenix House. 18s.

EYCK, ERICH. *Pitt Versus Fox: Father and Son: 1735-1806*. Bell. 21s.

Federalism in Australia. Papers read at a Summer School organized by the Australian Institute of Political Science. Melbourne: F. W. Cheshire. (London: Wadley & Ginn.) 12s. 6d.

JAMES, R. WARREN. *Wartime Economic Co-operation*. Issued under the auspices of the Canadian Institute of International Affairs. Toronto: Ryerson. \$5.

LONGHURST, HENRY. *You Never Know Till You Get There*. Dent. 16s.

MARRIOTT, PETER. *Property and the Nation*. Distributist Books. 1s.

MAYER, ALFRED. *Annals of European Civilization, 1501-1900*. Cassell. 25s.

MILWARD, G. E. (Editor). *Large-Scale Organization*. Macdonald & Evans. 16s.

NICHOLAS, H. S. *The Australian Constitution*. Sydney: Law Book Co.

NICOLSON, HAROLD. *Diplomacy*. Second edition. Oxford University Press. 5s.

PETRIE, Sir CHARLES. *The Jacobite Movement: The Last Phase, 1716-1807*. Eyre & Spottiswoode. 15s.

WILLIAMS, GERTRUDE. *The Economics of Everyday Life*. (Pelican Book A221) Penguin. 1s. 6d.

RECENT BRITISH GOVERNMENT PUBLICATIONS

Most of the British Government publications listed on this page are of special parliamentary or constitutional interest. All Government publications, including Hansard for the House of Lords and House of Commons (daily parts, weekly editions, or bound volumes) can be ordered through the Hansard Society.

- Anglo-French Discussions (The Schuman Plan).* Cmd. 7970. 4d.
- British Caribbean Standing Closer Association Committee, Report.* Col. No. 255. 3s. *Report on the Unification of the Public Services.* Col. No. 254. 2s.
- Consolidation of Enactments (Procedure) Act, 1949: Memorandum Relating to Matrimonial Causes in the High Court, etc.* (H.L. 41.) 3d. *Memorandum Relating to Adoption of Children.* (H.L. 42.) 3d.
- Consolidation Bills, 1950: First Report by the Joint Committee, on the Statute Law Revision Bill.* (H.L. 17, 18-1), H.C. 50-1. 9d. *Second Report, on the International Organizations (Immunities and Privileges) Bill.* (H.L. 17-1, 48-1), H.C. 86-1. 4d. *Third Report, on the Food and Drugs (Milk, Dairies and Artificial Cream) Bill.* (H.L. 17-11, 52-1), H.C. 87-1. 4d.
- Economic Survey for 1950.* Cmd. 7915. 1s.
- Election of a Member (Clergyman of the Church of Ireland), Special Report from the Select Committee.* H.C. 68-1. 2s. 6d.
- Estimates, First Report from the Select Committee.* H.C. 42. 3d.
- House of Commons Members' Fund, Accounts 1948-9.* H.C. 23. 3d.
- House of Lords Offices, First Report from the Select Committee.* (H.L. 8). 2d.
- Houses of Outstanding Historic or Architectural Interest.* (63-116*). 3s.
- Intermediaries, Report of the Committee.* Cmd. 7904. 2s. 6d.
- Kitchen and Refreshment Rooms, Special Report from the Select Committee.* H.C. 57. 3d. *Second Special Report.* H.C. 66. 3d.
- Leasehold Committee, Final Report.* Cmd. 7982. 4s.
- Lords Spiritual and Temporal, Roll.* (H.L. 1.) 9d.
- National Income and Expenditure of the United Kingdom, 1946-9.* (Cmd. 7933.) 1s. 6d.
- Public Accounts, First Reports from the Committee.* H.C. 37. 2d. *Second Report.* H.C. 70. 5s. *Third Report.* H.C. 78. 3d.
- Public Administration: a Bibliography.* (63-101-0-50.) 1s.
- Public Income and Expenditure for Year Ending 31st March, 1950.* H.C. 54. 3d.
- Scottish Local Government Manpower Committee, First Report.* Cmd. 7951. 9d.

Scottish Representative Peers, Minutes of Meeting. (H.L. 15.) 4d.

Statute Law Revision Bill. (H.L. 2.) 4s. *Amendments Made by the Joint Committee.* (H.L. 2a.) 1d.

Statutory Instruments, Reports from the Select Committee. H.C. 324. 1s. 3d. *Minutes of Proceedings.* H.C. 30. 3d. *Minutes of Further Proceedings.* H.C. 46. 3d. *First Report.* H.C. 53. 3d. *Second Report.* H.C. 63 3d. *Minutes of Further Proceedings.* H.C. 69. 2d. *Minutes of Further Proceedings.* H.C. 83. 3d. *Minutes of Further Proceedings.* H.C. 95. 2d.

Temporary Laws, Register of. H.C. 35. 6d.

UNITED NATIONS DOCUMENTS INDEX

A monthly index of all documents and publications of the United Nations and Specialized Agencies has been published since the beginning of 1950. The annual subscription to this index is 50s. (\$7.50), and orders can be placed through His Majesty's Stationery Office, P.O. Box 569, London, S.E.1; other H.M.S.O. retail shops; Sales Section, European Office of the United Nations, Palais des Nations, Geneva, Switzerland; Sales and Circulation Section, United Nations, Lake Success, N.Y., U.S.A.; or any United Nations Sales Agent.

THE INTERNATIONAL INSTITUTE OF POLITICAL AND SOCIAL SCIENCES (COMPARATIVE CIVILIZATIONS)

The International Colonial Institute was founded in Brussels in 1894 with the object of studying administrative problems in colonial territories. In 1948 the name of the organization was changed to the International Institute of Political and Social Sciences (Comparative Civilizations.) The membership of the Institute is limited to two hundred persons, and twelve countries are represented at the present time.

The twenty-fifth meeting of the Institute was held in Belgium in November, 1949, and the verbatim report of the proceedings and related documents have now been published. Among the British persons who took part in the meeting were Sir William McLean, Sir Drummond Shiels, and Mr. Tracy Philipps. A great variety of problems were discussed; special attention was given to a paper read by Dr. Gelders of the University of Louvain on problems of constitutional change in colonial and ex-colonial territories. All who are interested in these problems should consult the publications of the Institute. The Report of the 1949 meeting is available in the Reference Library of the Hansard Society.

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